

BENCHBOOK JUVENILE JUSTICE

for
Indiana Judges

DELINQUENCY

Including 1996 Indiana
General Assembly Amendments

Fifth Edition 1996

First Edition 1978
Second Edition 1980
Third Edition 1984
Fourth Edition 1992

Prepared by the Juvenile Benchbook Committee of the
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FOREWORD

The procedures and forms presented in this Benchbook were compiled and prepared by the Juvenile Benchbook Committee from the statutes and procedural rules of the State of Indiana, and from the practice of the judges and lawyers in Indiana's Juvenile courts.

This is not an official publication of the Supreme Court of Indiana and it should not be considered an authoritative statement of Indiana's law; judges and lawyers utilizing this Benchbook should always consult current statutory and case law for changes. These forms, dialogues and procedural guides have not been approved or endorsed by the Supreme Court of Indiana; however, these documents are offered as examples which judges have found to be helpful in the practice of juvenile delinquency law from their years of experience on the bench.

This is the Fifth Edition of the Juvenile Delinquency Benchbook. Much of juvenile delinquency law in Indiana, and in the United States, has changed since promulgation of the previous edition of this Benchbook. The Juvenile Court Judge's task of keeping current with the changes in juvenile delinquency law can, at times, seem daunting. It is the Committee's hope that this complete revision of the Juvenile Delinquency Benchbook, incorporating all statutory and case law changes in the area of Indiana Juvenile Delinquency law through August, 1996, will assist Indiana Juvenile Court Judges in meeting the increasing demands placed upon them each day.

My thanks and appreciation go to each of the members of the Benchbook Committee. Their hard work and innovative ideas have resulted in a first-rate product for their colleagues upon the bench. Our work was made easier through the professional assistance of Mr. Jeffrey Bercovitz and the entire staff of the Indiana Judicial Center; without their assistance, this project could not have been completed.

Your comments and suggestions for future changes or improvements will help this Committee maintain and improve its content. Please take a moment to complete and return the enclosed Customer Survey form. If you have suggestions for items of improvement or change for future revisions of this Benchbook, let us know by completing the form and returning it to the Committee, in care of the Indiana Judicial Center.

**Christopher L. Burnham, Chair
Juvenile Benchbook Committee**

September, 1996

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Code Conversion Table

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1	31-6-4-9(e)	31-37-10-5
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SCOPE NOTE AND PROCEDURE
Temporary Detention and Custody Decisions

Taking a child into custody pursuant to IC 31-6-4-4.

IC 31-6-4-4 specifies four ways in which a child "may be taken into custody:"

- (a) by any law enforcement officer acting under an order of the court of juvenile jurisdiction.
- (b) by any law enforcement officer acting with probable cause to believe the child has committed a delinquent act;
- (c) by any law enforcement officer, probation officer, or caseworker acting with probable cause to believe the juvenile is in need of services under certain emergency circumstances.
- (d) by any law enforcement officer, probation officer, or caseworker acting with probable cause to believe the child is a CHINS because the child is a missing child as defined by IC 10-1-7-2.

NOTE: **A probation officer or caseworker can take a child into custody ONLY if it is impracticable secure to assistance from a law enforcement officer.**

The issuance of a court order to take a child into custody pursuant to IC 31-6-4-9(e).

IC 31-6-4-9(e) permits a person (prosecutor or attorney for the county office of family and children), contemporaneously with the court's approval of delinquency petition, to request in writing that the child be taken into custody. The request shall be supported by either sworn testimony or an affidavit justifying the request. The request may be granted only if the court "makes written findings of fact upon the record that a ground for detention exists under IC 31-6-4-5(g).

USE FORM D-5.03

For placement in secure or shelter facility and limitations on place of detention, see IC 31-6-4-6.5.

A juvenile apprehended upon the authority of such an order shall be taken "to a place designated in the order to await a detention hearing [IC 31-6-4-5(b)]."

The issuance of a court order to take a child into custody pursuant to 34-4-9-2.1 for failure to appear in response to summons, subpoena, or notice given in open court.

IC 34-4-9-2.1 allows the court to order a body attachment for persons who fail to appear as ordered by the court.

A juvenile apprehended upon the authority of such a body attachment shall be taken "to a place designated in the order to await a detention hearing [IC 31-6-4-5(b)]."

A court may not place a child in a facility outside the child's county of residence if there is a comparable facility with adequate services within the child's county of residence. IC 31-6-4-6.5(e)

Custody determinations are required to be made in varying degrees by all persons taking children into custody pursuant to IC 31-6-4-5.

A child taken into custody under court order shall be taken by the law enforcement officer "to a place designated in the order to await a detention hearing [IC 31-6-4-5(b)]."

A child taken into custody without such an order may be released to his parent, etc. by the law enforcement officer upon written promise to appear, but may [IC 31-6-4-5(c)] also be placed in detention by the officer if he reasonably believes that:

- (1) the child is unlikely to appear for subsequent proceedings;
- (2) the act involved is murder or a Class A or B felony;
- (3) detention is "essential to protect the child or community";
- (4) The parent, etc. cannot be located or is unable or unwilling to take custody;
or
- (5) the child has a reasonable basis for requesting that he not be released.

NOTE: A child detained for reasons (4) or (5) may not be detained in secure detention, and a runaway may be held in secure detention for only twenty-four (24) hours, excluding Saturdays, Sundays and nonjudicial days. For other restrictions and limitations on detention see 31-6-4-6.5 and IC 31-6-7-16(c) and (f) (secure detention of repeat runaways and repeat truants).

USE FORM D-1.02 and D-1.03

A child taken into custody without such a court order and so placed in detention by the law enforcement officer must be taken to a place designated by the court [IC 31-6-4-5(d)]. The child's parent, etc. and an intake officer must immediately be notified:

- (1) that the child is in detention;
- (2) where the child is being held; and
- (3) the reasons for the detention.

USE FORM D-1.03

A child taken into custody and so placed in detention without a court order must have the reasons for his detention investigated by an intake officer [IC 31-6-4-5(e)] and such child must be released to his parent, etc. upon such person's written promise to appear, but may also be retained in detention if the intake officer reasonably believes that the child is a delinquent child and any one of the five detention criteria noted above exists.

NOTE: The requirements of IC 31-6-4-6.5(a) must be followed.

A child taken into custody and so placed in detention without a court order and so detained by the intake officer is entitled to: (1) a probable cause determination by a judicial officer within forty-eight (48) hours of the time he was taken into custody; and (2) a detention hearing within forty-eight (48) hours (excluding Saturdays, Sundays and legal holidays) after he is taken into custody [IC 31-6-4-5(f)]. The notice of the time, place and purpose of the detention hearing shall be given to the child and his parent, etc. if the parent, etc. can be located. At the hearing the child and his parent, etc. shall be informed of the child's right to counsel and to refrain from testifying against himself and the court may appoint counsel under IC 31-6-7-2.

USE FORM D-1.04

Such a child must be released to his parent, etc. upon such person's written promise to appear, but may also be detained in detention by the court's order if the court finds probable cause to believe that the child is a delinquent child and anyone of items (1), (3), (4) or (5) of the detention criteria noted above exists.

The Fourth Amendment requires a "prompt" judicial determination of probable cause as a prerequisite to pretrial detention following a warrantless arrest. "Prompt" means within 48 hours generally. However, 48 hours may not suffice in certain instances. If the arrested person is held over 48 hours without a probable cause determination, the state must show a "bona fide emergency" or "other extraordinary circumstance". Weekends do not qualify as an "extraordinary circumstance".

County of Riverside v. McLaughlin, 500 U.S. 44, 111 S. Ct. 1661, 114 L.Ed 49 (1991).

Legal Settlement for school purposes: The juvenile court shall make a finding of legal settlement of the child in a dispositional order, modification order or other decree when the court places a child or changes the placement of a child. This affects transfer tuition fees. IC 31-6-4-18.5; IC 20-8.1-6.1-1 [Legal Settlement]. The juvenile court shall, within ten days of placement, comply with the reporting requirements under IC 20-8.1-6.1-5.5 concerning the legal settlement of the child.

The Court is required to consider ordering parents to pay for services [including detention costs] provided to the child or the parent or guardian, unless the Court finds that the parent or guardian is unable to pay, or that justice would not be served by ordering payment. IC 31-6-4-18(e).

USE FORM D-1.07

NOTE: The same requirements of IC 31-6-4-6.5(a) as specified above must be followed.

NOTE: A child released after such a detention hearing may be ordered to reappear for an additional detention hearing.

USE FORM D-1.08

NOTE: A child detained after one detention hearing may petition the court for an additional hearing.

NOTE: At any stage of the proceedings, the court may order parent(s) of a child to pay for services provided to the child in accordance with the child support guidelines adopted by the Indiana Supreme Court. IC 31-6-4-18(e).

USE FORM D-1.08

A child may not be released on bond except as provided by IC 31-6-2-4 (i.e. waiver cases).

But see **Trimble v. Stone**, 187 F. Supp. 483 (D.C. Columbia (1960) on issue of constitutional right of juvenile to bond in delinquency proceedings. A juvenile court may require a child to surrender his driver's license as a condition of release as provided by IC 31-6-4-5(k).

If a detention hearing is not timely held, the juvenile is entitled to release from detention, but the juvenile court does not lose jurisdiction and juvenile is not entitled to dismissal or discharge.

Tacy v. State, 452 N.E.2d 977 (Ind. 1983);

Gerrick v. State, 451 N.E.2d 327 (Ind. 1983);

Spikes v. State, 460 N.E.2d 954 (Ind. 1984) [vacated and remanded on other grounds by U.S. Supreme Court at 471 U.S. 1001; *on remand*, conviction reaffirmed by Indiana Supreme Court at 501 N.E.2d 423 (Ind. 1986).]

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Juvenile

WRITTEN PROMISE FOR APPEARANCE OF JUVENILE

I, the child, parent (or the guardian or custodian of the above named child) do promise to appear (and bring the child) to the Juvenile Court when requested to do so by _____

or in response to lawful process.

Dated: _____

Parent

Address

I hereby release the child, _____, to the custody of his parents or other persons _____, upon the condition that the child and his parent, guardian or custodian appear in person in the Juvenile Court at a time to be later specified and upon the further following conditions:

Dated: _____

Detaining Officer or Intake Officer

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

TO: _____

NOTICE OF DETENTION OF CHILD

You, as the parent, guardian, custodian or intake officer are hereby notified that the child , _____, age _____, and residing at _____, has been placed in detention at _____ by the _____ police department because there is probable cause to believe that said child has committed a delinquent act and one or more of the following conditions contained in IC 31-6-4-5 - as marked by an "x" - exists with respect to said child:

- ☐ the child is unlikely to appear for subsequent proceedings;
- ☐ the act involved is murder or a Class A or Class B felony;
- ☐ detention is "essential to protect the child or the community";
- ☐ the parent, etc. cannot be located or is unwilling or unable to take custody; or
- ☐ the child has a reasonable basis for not requesting he or she not be released.

Please contact _____ at _____
(telephone) for further information.

Detaining Officer or Intake Officer

Dated: _____

Address: _____

Time: _____

Phone: _____

STATE OF INDIANA
_____ COURT

In The Matter Of _____

_____ Case No. _____
A Child Alleged to be a Delinquent Child

NOTICE OF DETENTION HEARING

The State of Indiana to _____.
(a child under the age of eighteen years)
(the parent, guardian or custodian of the child)

You are hereby commanded to appear personally before the Judge of the _____
_____ Court at the Court House, Room _____ in _____
_____, Indiana on the ____ day of _____, 19__ at _____
o'clock __.M. for a Detention Hearing. The purpose of the Detention Hearing is to determine if said
child should remain in detention or be released from detention, and if release is ordered, upon what
condition.

If you fail to appear as above commanded, without reasonable cause, you may be considered
to be in contempt of court and an attachment for your person may be issued by the court.

Dated this ____ day of _____, 19__.

Signature

Title

STATE OF INDIANA

____ COURT

In the Matter of:)

)

)

____,) AFFIDAVIT, FINDINGS AND 48 HOUR
ORDER REGARDING PROBABLE CAUSE

A Child Alleged to be a Delinquent Juvenile

Age: _____ (D/O/B: _____)

AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE

The undersigned Probation Officer on the day and date below represents as follows:

1. That as an Intake Officer and pursuant to IC 31-6-4-5 the officer has investigated the reasons for said child's current detention and reasonably believes that said child is a delinquent child under Indiana law.

2. That the following information regarding the circumstances of said juvenile's arrest and detention was furnished to the undersigned during the course of his investigation:

a. Time of arrest (24 hour local time): _____

b. Date of arrest: _____

c. Arrest agency/officer: _____

d. Place of detention at time or review by Intake Officer:

() Detention Center: _____

() Other: _____

3. That the undersigned reasonably believes that the information summarized in paragraph (4.) below establishes probable cause to believe that said child committed the indicated offense or offenses:

- a. () Runaway offense contrary to IC 31-6-4-1(a)(2);
- b. () Truancy offense contrary to IC 31-6-4-1(a)(3);
- c. () Ungovernable offense contrary to IC 31-6-4-1(a)(4);
- d. () Curfew offense contrary to IC 31-6-4-1(a)(5);
- e. () Alcoholic beverage offense contrary to IC 31-6-4-1(a)(1);

f. () Criminal acts contrary to IC 31-6-4-1(a)(1):

<u>Count:</u>	<u>Specific Offense/Class</u>	<u>Statutory Cite</u>
---------------	-------------------------------	-----------------------

1)

2)

3)

4)

4. That the undersigned reasonably believes that the following information establishes probable cause to believe that said child committed the offense or offenses indicated above in paragraph (3.) of this Affidavit:

SECURE DETENTION OPTION

5. That in addition, the officer reasonably believes that said child should be detained in secure detention at the _____ Detention Center for one or more of the following reasons:

- () Said child has committed an act which would be murder or a Class A or Class B Felony if committed by an adult;
- () Detention is essential to protect said child;

- () Detention is essential to protect the community;

-OR-

NON-SECURE DETENTION OPTION

5. That in addition, the officer reasonably believes that said child should be detained in non-secure detention at _____ for one or more of the following reasons:

- () The parent, guardian or custodian of said child cannot be located or is unable or unwilling to take custody of said child; or
- () Said child has a reasonable basis for requesting that he or she not be released.

I affirm under the penalties of perjury that the following representations are true to the best of my knowledge and belief on this ____ day of _____, 19____,

Signature

Printed

Address and Phone Number of juvenile probation officer

STATE OF INDIANA
_____ COURT

In The Matter of: _____

)

) WRITTEN FINDINGS

) RECOMMENDATIONS AND 48 HOUR

) ORDER REGARDING PROBABLE CAUSE

_____ A Child Alleged to be a Delinquent Child)

Age: _____ (D/O/B): _____)

Based upon information received and affirmed under the penalties of perjury from, _____, on this _____ day of _____, 19____ at _____.M. the Court now FINDS as follows:

1. That with regard to such detention the following information is true:
 - a. Time of arrest (24 hour local time): _____
 - b. Date of arrest: _____
 - c. Arresting agency/officer: _____
 - d. Place of detention: _____
2. That based upon the information provided, the Court:
 - () FINDS no probable cause to exist for any offense and that said child should be released to the custody of child's parent, guardian or custodian or the child's own recognizance.
 - () FINDS probable cause to believe that said child committed the following offense or offenses:
 - a. () Runaway offense contrary to IC 31-6-4-1(a)(2);
 - b. () Truancy offense contrary to IC 31-6-4-1(a)(3);
 - c. () Ungovernable offense contrary to IC 31-6-4-1(a)(4);
 - d. () Curfew offense contrary to IC 31-6-4-1(1)(5);
 - e. () Alcoholic beverage offense contrary to IC 31-6-4-1(a)(1);
 - f. () Criminal acts contrary to IC 31-6-4-1(a)(1):

<u>Count:</u>	<u>Specific Offense/Class</u>	<u>Statutory Cite</u>
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- 1)
- 2)
- 3)
- 4)

3. That said juvenile should be continued in secure custody at: _____
_____ and that a detention hearing should be held pursuant to IC 31-6-4-5 on _____

_____, 19__ at _____.M. or as soon thereafter as the matter may be heard by the Court and that such Intake Officer should notify said juvenile and said juvenile's parent, guardian or custodian of same.

Judge/Referee/Magistrate _____ Court

The above FINDINGS of the Referee/Magistrate are approved and adopted as the FINDINGS and ORDER of the Court on the date file marked hereon.

Judge _____ Court

STATE OF INDIANA
_____ COURT

In The Matter Of _____

_____ Case No. _____
A Child Alleged to be a Delinquent Child

ORDER ON DETENTION HEARING

_____ was produced before the Court for a
(child's name)
Detention Hearing this ____ day of _____, 19 ____.

Actual notice of the time, place and purpose of Detention Hearing
has been given to the child and _____,
(parent) (guardian) (custodian)
or _____ cannot be located and notice
(parent) (guardian) (custodian)
has been given to the child and child's _____,
(parent) (guardian) (custodian)
of the child's right to counsel and right against self-incrimination.

Present at the hearing are: _____.

Detention Hearing is now held.

- () The Court now finds that probable cause exists to believe that said child is a delinquent child and that said child be detained because:
- () the child is unlikely to appear for subsequent proceedings;
 - () detention is essential to protect the child or the community;
 - () the parent, guardian, or custodian cannot be located or is unable or unwilling to take custody of the child; or
 - () the child has a reasonable basis for requesting that he not be released.

The Court orders that said child be detained in the following placement until further order by the Court: _____.

-OR-

- () The Court now finds that probable cause exists to believe that said child is a delinquent child but that said child is not in need of further detention, and accordingly, orders that said child be released to

_____.

(parent) (guardian) (custodian)
upon the latter's written promise to bring the child before the Court on the ____ day of _____, 19 ____ at _____ o'clock ____M. and from day to day thereafter as hereinafter ordered by the Court.

- () The Court now finds that probable cause does not exist to believe that said child is a delinquent child and orders said child released to the custody of _____.
(parent) (guardian) (custodian)

The Court now finds as follows:

The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide notice required by IC 20-8.1-6.1-5.5.

- () Pursuant to IC 31-6-4-18(e), the child's _____
(Parents, Guardian of child's estate)
shall pay for services provided to the child or the parents or guardian, as follows:

-OR-

- () Pursuant to IC 31-6-4-18(e), the Court finds, that at the present time, the parents of the child are unable to pay, or that justice would not be served by ordering payment;

Ordered this ____ day of _____, 19 ____.

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

PETITION FOR DETENTION HEARING

I, _____, do request that the above named
(child) (parent) (custodian)

child be granted a prompt hearing to determine if said child should be released from detention.

Dated: _____

Petitioner

ORDER

The Court having examined Petition for Detention Hearing, now (grants) (denies) said
Petition, and sets the Cause for hearing on

_____ at _____ at _____
(date) (time) (place)

SO ORDERED this ____ day of _____, 19__.

Judge

IN THE STATE OF INDIANA
_____ COURT

IN THE MATTER OF _____

_____ Case No. _____
A Child Alleged To Be A Delinquent Child

WRIT OF ATTACHMENT FOR FAILURE TO APPEAR

THE SHERIFF OF _____, INDIANA IS ORDERED AND
COMMANDED TO ATTACH:

Child's Name:

Address:

Parent/Guardian:

Sex: _____ Race: _____ Height: _____ Weight: _____ Hair: _____
Features: _____ Birth date: _____ S.S.#: _____

(Identifying Information Provided By: Probation Department)

These FINDINGS were made on (_____) (the date file marked hereon) by the
JUDGE (Referee) and the JUDGE (Referee) ORDERS (Recommends) that they be adopted as
the FINDINGS and ORDER of the Court:

1. The Court on said date conducted a hearing on_____.
2. Proof was given to the Court of:
 - () Service of Summons for hearing this date.
 - () Service of a Subpoena for hearing this date.
 - () Said person's presence in Court when further hearing was continued to this date.
3. Said person failed to appear personally or by counsel and is in default.
4. Such failure to appear merits the issuance of a Body Attachment returnable:
 - () To _____ Detention Center.
 - () To the place designated by the court:_____
 - (If such person is age eighteen (18) or older.)

Judge (Referee)
_____ Court

The Court having considered said FINDINGS and Recommendations of the Referee, the Court now approves the same and adopts them as the FINDINGS and ORDER of the Court on (Said date) (the day and date file marked hereon).

DATED: _____

Judge

**DETENTION REPORT TO COURT
DELINQUENT CHILDREN**
(Optional Form to be Used by Arresting Officer)

GENERAL INFORMATION

1.

Full Name of Child	Sex	Race	Age	Birth Date
--------------------	-----	------	-----	------------
2.

Address	Res. Phone	Grade	School
---------	------------	-------	--------
3.

Father	Address	Phone
--------	---------	-------
4.

Mother	Address	Phone
--------	---------	-------
5.

Custodian, Guardian	Address	Phone	Relationship
---------------------	---------	-------	--------------

The undersigned alleges there is probable cause to believe said child has committed a delinquent act and is a delinquent child and one or more of the conditions contained in IC 31-6-4-5 - as marked by an "x" - exists with respect to said child:

- ☐ the child is unlikely to appear for subsequent proceedings;
- ☐ the act involved is murder or a Class A or Class B felony;
- ☐ detention is "essential to protect the child or the community";
- ☐ the parent, etc. cannot be located or is unwilling to take custody; or
- ☐ the child has a reasonable basis for not requesting release.

6.

Place of Detention	Date of Placement in Shelter Care	Time
--------------------	-----------------------------------	------

INFORMATION REGARDING DELINQUENT ACT

Describe in Detail (Attach report if needed.)

Date and Place of Delinquent Act

Others involved

Witnesses	Address	Phone
-----------	---------	-------

Complainant's Name	Address	Phone
--------------------	---------	-------

Parents Contacted and/or Notified By	Date	Time
--------------------------------------	------	------

Released to Parents or Others	Date	Time
-------------------------------	------	------

Placed in Custody of Intake Officer of Detention Facility	Date	Time
--	------	------

Detaining Officer	I.D. No.	Signature	Date
-------------------	----------	-----------	------

Code Conversion Table

[illegible]

SCOPE NOTE

Jurisdiction in Delinquency Cases - How Obtained

Statutory jurisdiction:

IC 31-6-2-1.1:

The juvenile court has exclusive original jurisdiction, except as provided in IC 31-6-2-1.5, in all proceedings governing the detention of a delinquent child. Also, violations of IC 7.1-5-7 if the child is under sixteen years of age. However, the juvenile court does not have jurisdiction with respect to a child who commits an infraction, violation of a municipal ordinance or violation of a traffic law if the traffic law violation is a misdemeanor and the child is 16 years of age or older. The juvenile court has exclusive jurisdiction over a juvenile who commits a violation of IC 9-30-5 (Operating While Intoxicated offenses).

With or without granting probation, a juvenile court retains jurisdiction over a child and may modify its dispositional decree at any time. Jurisdiction ceases to exist only when the child reaches age twenty-one, is discharged, or is committed to the Department of Correction.

Matter of L.J.M., 473 N.E.2d 637, at 639, fn 1 (Ind. App. 1985).

Once a juvenile court acquires jurisdiction over a child, it has exclusive jurisdiction over the child and no other court may thereafter acquire jurisdiction over the child while the court exercises juvenile jurisdiction.

Guardianship of Bramblett, 495 N.E.2d 798 (Ind. App. 1982, involving a CHINS adjudication).

A juvenile court has no jurisdiction to issue a protective order concerning custody without first acquiring jurisdiction of the underlying case, notwithstanding IC 31-6-2-1.1.

Davis v. Winston, 535 N.E.2d 1240 (Ind. App., 1989).

A juvenile court has concurrent original jurisdiction with the probate court in proceedings to terminate the parent-child relationship.

A juvenile court does not have jurisdiction to entertain an independent action for emancipation. Emancipation is a dispositional alternative when the child is a delinquent or a CHINS.

A juvenile court does not have jurisdiction over a child who has previously been waived to a court having adult misdemeanor or felony jurisdiction. IC 31-6-2-1.1(b)(4)

Crimes excluded from juvenile jurisdiction:

IC 31-6-2-1.1(d):

Excluded from the jurisdiction of juvenile courts are prosecutions against a sixteen year old or older individual for alleged violations of the following:

- (1) IC 35-42-1-1 (murder);

- (2) IC 35-42-3-2 (kidnaping)
- (3) IC 35-42-4-1 (rape);
- (4) IC 35-42-4-2 (criminal deviate conduct)
- (5) IC 35-42-5-1 (robbery), if:
 - (A) it was committed while armed with a deadly weapon; or
 - (B) it results in bodily injury or serious bodily injury;
- (6) IC 35-42-5-2 (car jacking);
- (7) IC 35-45-9-3 (criminal gang activity)
- (8) IC 35-45-9-4 (criminal gang intimidation)
- (9) IC 35-47-2-1 (carrying a handgun without a license)
- (10) IC 35-47-10 (children and firearms)
- (11) IC 35-47-5-4.1 (dealing in a sawed-off shotgun);
- (12) IC 35-48-4-1 (dealing in cocaine or a narcotic drug);
- (13) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance);
- (14) IC 35-48-4-3 (dealing in a schedule IV controlled substance); or
- (15) Any offense that may be joined [under IC 35-34-1-9 (a)(2)] with the crime listed in subdivisions (1) through (14).

The age sixteen requirement pertains to all crimes listed in IC 31-6-2-1.1(d) [formerly IC 31-6-2-1(d)]. **Caldwell v. State**, 452 N.E.2d 278 (Ind. 1983)

Once such an individual has been charged with any crime listed in clause (1) through (15) of IC 31-6-2-1.1(d) the court having adult criminal jurisdiction shall retain jurisdiction over the case, even if the individual pleads guilty to or is convicted of a lesser included offense. A plea of guilty to, or a conviction of, a lesser included offense does not vest jurisdiction in the juvenile court.

In felony-murder prosecution, the underlying felony may be charged in criminal court without having a waiver hearing. **Douglass v. State**, 466 N.E.2d 722 (Ind. 1984)

Under case law, certain steps have always been considered necessary to obtain juvenile jurisdiction. The question usually is raised on review following a waiver of juvenile jurisdiction to a criminal court. The Benchbook Committee believes that five essential elements are necessary under the Juvenile Code to obtain juvenile jurisdiction in a delinquency proceeding. These five essential elements are:

- 1. **Written intake information;**
- 2. **Prosecutor's request for preliminary inquiry;**
- 3. **Written report of preliminary inquiry;**
- 4. **The delinquency petition;**
- 5. **The order of the juvenile court approving the filing of the delinquency petition.**

However, this referral procedure may be altered by agreement of the prosecutor and the court. IC 31-6-4-7; IC 31-6-4-9.

The following cases have been decided under the present Code:

Taylor v. State, 438 N.E.2d 275 (Ind. 1982).

Douglass v. State, 466 N.E.2d 721 (Ind. 1984).

Kindred v. State, 493 N.E.2d 467 (Ind. 1986).

If the statutory steps are not followed in acquiring jurisdiction over a juvenile, the waiver of the juvenile may be challenged. *But see*: A juvenile court's jurisdiction over a juvenile for a delinquency adjudication for illegal consumption establishes jurisdiction for purposes of another delinquency charge and subsequent waiver of that second charge to adult court. The procedural requirements of Ind. Code 31-6-4-7, which require the intake officer to complete a preliminary inquiry, send this report to the prosecutor, and have the prosecutor decide whether to file a petition based thereon and issue a summons to the parents, are not required. **S.W.E. v. State**, 563 N.E.2d 1318 (Ind. App., 1990).

Improper statutory citation as a basis for waiver is not grounds for reversal under certain circumstances. **S.W.E. v. State**, 563 N.E.2d 1318 (Ind. App., 1990).

Juvenile court made appropriate findings of fact even though local rule required prosecutor to provide waiver order. **S.W.E. v. State**, 563 N.E.2d 1318 (Ind. App., 1990).

Age:

IC 31-6-4-1

Age of person at time of commission of act or status determines jurisdiction.

Age determines juvenile court's subject matter jurisdiction but only affects a criminal court's personal jurisdiction. Thus, if a non-juvenile misrepresents his age and pleads guilty to a criminal charge without the court's knowledge, his conviction is valid and may not be attacked for lack of subject matter jurisdiction through a petition for post-conviction relief. **Twyman v. State**, 459 N.E.2d 705 (Ind. 1983)

IC 31-6-4-9(g):

Parties to the juvenile delinquency proceedings are:

- (1) the child;
- (2) the child's parent(s), guardian(s) or custodian(s);
- (3) the Prosecuting Attorney.

All rights of parties provided in the Indiana Rules of Trial Procedure apply in juvenile delinquency proceedings.

Code Conversion Table

[illegible]

SCOPE NOTE

Written Intake Information and Preliminary Inquiry

Written intake information and prosecutor's request for preliminary inquiry:

IC 31-6-4-7(a) and (b).

Right to information by parent and advice which intake officer must give child and parent, guardian or custodian:

IC 31-6-4-7(e):

Report of preliminary inquiry

IC 31-6-4-7(e).

Intake officer's duties:

IC 31-6-4-7.

The statute does not indicate to what extent a social history should be developed in a report and preliminary inquiry and the extent or direction of the investigation will necessarily vary with the circumstances of each case. **Murphy v. State**, 408 N.E.2d 1311 (Ind. App.. 1980, decided under former statute).

Local coordinating committee:

IC 31-6-14.

If a judge or probation officer believes that a restrictive placement will be made, the prosecutor, judge and members of the local coordinating committee may be alerted.

PROCEDURE

Written Intake Information and Preliminary Inquiry and Report

1. Receipt of intake information.
 - A. Any person may give an intake officer or prosecutor written information indicating a child is a delinquent child. IC 31-6-4-7(a). If the information is given to the intake officer, he shall immediately forward the information to the prosecutor. USE FORM D-3.03 unless sufficient written report has been received from a police department or other referral agency. FORM D-3.03 should be used for citizen referrals, as well as any instance where a written police or agency report is either unavailable or deemed insufficient. The Benchbook Committee believes the written information referred to in IC 31-6-4-7(a) should be called "Intake Information." The statute does not require it to be verified, but it should be signed by the person giving same, or by someone on behalf of the referring agency.
 - B. Under existing case law the written intake information is an essential document to acquisition of juvenile jurisdiction and it, together with the report of preliminary inquiry, should be filed with the Court and made a part of the record at the time the delinquency petition is filed.
- II. Preliminary inquiry and report.
 - A. If the prosecutor has reason to believe the child has committed a delinquent act, he shall instruct the intake officer to make a preliminary inquiry to determine whether the interests of the public or the child require further action. A preliminary inquiry is an informational investigation into the facts and circumstances reported to the court. Whenever practicable, it should include information on the child's background, current status, and school performance. IC 31-6-4-7(a) and (b).
 - B. If a parent, guardian or custodian of a child seeks information concerning a preliminary inquiry, he shall be notified whether a preliminary inquiry is being made and, if so, the nature of the inquiry.
 - C. In the event of a child interview, the intake officer shall advise the child and his parent, guardian or custodian:
 1. of the nature of the allegation against the child;
 2. that he is conducting a preliminary inquiry to assist the prosecutor in determining whether a petition should be filed alleging that the child is a delinquent child;
 3. that he will recommend whether to file a petition, informally adjust the case, refer the child to another agency, or dismiss the case; and
 4. that the child has a right to remain silent, that anything he says may be used against him in subsequent judicial proceedings, that the child has a right to consult with an attorney before he talks with the intake officer and that the

child has a right to stop at any time and consult with an attorney and to stop talking with the intake officer at any time, and that if the child cannot afford an attorney, the court will appoint one for him. IC 31-6-4-7(d).

USE FORM D-3.04.

NOTE: An intake officer is not always required to conduct a child interview in preparing the preliminary inquiry. If a child interview is conducted, consider having the intake officer advise the parents of their rights and obligations under IC 31-6-4-13(f). See Form D-3.04.

- D. If a child is in detention, only seven (7) (excluding Saturdays, Sundays, and legal holidays) days are allowed for filing of a formal petition after the child is taken into custody. It is recommended that the intake officer attempt to contact the parent and child in person or by telephone as needed to timely complete the investigation and report. USE FORM D-3.05 for consent to background investigation and release.
- E. The intake officer shall send the prosecutor a copy of the preliminary inquiry in all cases involving allegations that the child committed an act that would be a crime if committed by an adult. The intake officer shall send to the prosecutor or the attorney for the county department a copy of the preliminary inquiry in all cases involving allegations that the child committed a delinquent act that would be a crime if committed by an adult. He shall recommend whether to file a petition, informally adjust the case, refer the child to another agency, or dismiss the case. This referral procedure may be altered by agreement of the prosecutor and the court.

IC 31-6-4-7(e).

USE STANDARD PRELIMINARY INQUIRY/PREDISPOSITION REPORT for report of preliminary inquiry. [Promulgated by the Judicial Conference of Indiana.] See form D-3.06.

- F. If the probation officer believes that a restrictive placement will be made, the members of the local coordinating committee may be alerted according to IC 31-6-14.

STATE OF INDIANA

____ COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**INTAKE INFORMATION FOR A DELINQUENT CHILD
AND PROSECUTOR'S REQUEST FOR PRELIMINARY INQUIRY**
IC 31-6-4-7(a)

To the Prosecutor or Intake Officer of the _____ Court:

The undersigned hereby informs the Court that:

Name_____
Age_____
Birth date_____
Sex

whose parents are:

Father _____

Address

Mother _____

Address

or whose guardian or custodian is _____

Address

and who is now residing with _____ is a delinquent child in that:

The undersigned requests that the Intake Officer of said Court make a preliminary inquiry to determine whether the interests of the public or of the child require further action.

Dated: _____

Signature_____
Official Title, if any

Witness to signature: (Optional)

Address

Please check if applicable:

☐ Restrictive placement may be considered.

Having reason to believe that said child has committed a delinquent act, the undersigned Deputy/Prosecutor instructs the Intake Officer for said Court to make a preliminary inquiry to determine whether the interests of the public or of the child require further action.

Dated: _____

Deputy/Prosecutor

STATE OF INDIANA

____ COURT

In the Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**INTAKE OFFICER'S ADVICE TO A DELINQUENT CHILD AND PARENT,
GUARDIAN OR CUSTODIAN**

TO SAID CHILD AND HIS OR HER PARENT, GUARDIAN OR CUSTODIAN:

You are hereby advised of the following rights:

1. you have a right to know the nature of allegations against said child;
2. the undersigned intake officer is conducting a preliminary inquiry to assist the prosecutor in determining whether a petition should be filed alleging that said child is a delinquent child;
3. the undersigned intake officer will recommend whether to file a petition, informally adjust the case, refer the child to another agency, or dismiss the case;
4. said child has a right to remain silent, anything he says may be used against him in subsequent judicial proceedings, he has a right to consult with an attorney before he talks with the intake officer, and he has a right to stop at any time and consult with an attorney, and to stop talking with the intake officer at any time;
5. if said child cannot afford an attorney, the Court will appoint one for him or her; and
6. the parent, guardian or custodian may controvert any allegations made at the dispositional or other hearing concerning their participation or may controvert any allegations concerning their financial responsibility for any services that would be provided.

You are further advised that the parents, guardian or custodian of the child may be subjected to the following obligations if the child is adjudicated a delinquent child:

1. The parent, guardian or custodian may be required to participate in a program of care, treatment or rehabilitation for the child; and
2. The parent or guardian of the estate may be held financially responsible for any services provided for himself or the child including the services of court appointed counsel.

Dated this ____ day of _____, 19 ____.

Intake Officer

By signing this paper, you agree only that you have received this advice.

Signature of Child

Signature of Parents, Guardian or Custodian

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

CONSENT TO BACKGROUND INVESTIGATION AND RELEASE

The above named child and his (parent) (guardian) (custodian) hereby give consent to the _____ County Probation Department to make a complete and detailed investigation of the child's conduct and progress in school, the child's physical, medical and mental condition history, the nature of the child's home and family, and other matters concerning the child's background in order to help the Department and Court decide what best can be done to help the child.

We hereby authorize any person, agency or school corporation having any such information to release all records and information as to such child to _____ County Probation Department, at _____

(address)

A photocopy of this consent and release shall be as valid as the original .

Date: _____

Child

Witness: _____

(Parent) (Guardian) (Custodian)

**Standard Preliminary Inquiry
Promulgated by Indiana Judicial Center**

**PROBATION OFFICERS REPORT OF PRELIMINARY INQUIRY AND/OR
PREDISPOSITIONAL REPORT**

Warning: This report is confidential according to I.C. §31-6-8-1 and may only be released with specific authorization.

Indiana Code § 31-6-4-7(b) and § 31-6-4-15

STATE OF INDIANA
(INSERT COURT NAME)

*For use by probation
departments only*

In the Matter of: _____
A Child Alleged to be a Delinquent Child

Date Completed: _____
Assigned P. O.: _____ Report Prepared By: _____

JUVENILE INFORMATION

Case No.(s): _____ Legal Name: _____
_____ Alias(es)/Nickname(s): _____
_____ Custodial Person(s) or Agency: _____
_____ Street Address: _____
_____ City: _____ State: _____ Zip: _____
_____ Telephone: _____ Social Security No.: _____
_____ DOB: _____ POB: _____ Age: _____
Race: _____ Gender: _____ Ht.: _____ Wt.: _____ Eyes: _____ Hair: _____ ID Marks: _____
_____ Driver's Lic. No.: _____
State of Issue: _____ Status: _____

JUVENILE'S LEGAL INVOLVEMENT

_____ Chg(s) pending _____ Detainer(s) _____ Inf. Adj. _____ Probation _____ Res. Plcmnts. _____ IDOC
_____ DFCS Ward _____ Violations _____ Parole _____ Waived _____ Adult Status _____ Other Contacts

DELINQUENT ACT(S) INFORMATION

Alleged Offense: _____ Date Committed: _____ I.C. _____
_____ Class (if committed by an adult): _____ Felony/Misdemeanor (Circle One)

Alleged Offense: _____ Date Committed: _____
I.C. _____ Class (if committed by an adult): _____ Felony/Misdemeanor (Circle One)

Alleged Offense: _____ Date Committed: _____
I.C. _____ Class (if committed by an adult): _____ Felony/Misdemeanor (Circle One)

Referring Agency: _____ Custody Status: _____

_____ Co-Offender(s)/Status: _____
_____ Case No.(s): _____

PRIOR LEGAL HISTORY

<u>Date of Referral</u>	<u>Charge(s)</u>	<u>Case No.</u>	<u>Disposition (Date/Type)</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

EDUCATION, EMPLOYMENT, HEALTH

School: _____ Grade/Status: _____ Special
Educational Classification: ___ Yes ___ No Special Educational Placement: ___ Yes ___ No
Mental Health Referrals: ___ Yes ___ No
Physical Problems: ___ Yes ___ No If the answer is yes to any of the questions in this
Alcohol/Drug Use: ___ Yes ___ No section, an explanation is required in the "additional
Gang Involvement: ___ Yes ___ No information" section.

Employer: _____ Position: _____
Hours: _____ \$ _____/hr.

FAMILY INFORMATION

Father's Name: _____ SSN (if available): _____
Address: _____ Employment: _____
Hours: _____
Home Telephone: _____ Work Telephone: _____

Mother's Name: _____ SSN (if available): _____
Address: _____ Employment: _____
Hours: _____
Home Telephone: _____ Work Telephone: _____

Guardian: _____
Address: _____ Employment: _____
Hours: _____
Home Telephone: _____ Work Telephone: _____

Significant Other(s): _____ Relationship: _____
Address: _____ Employment: _____
Hours: _____
Home Telephone: _____ Work Telephone: _____

Siblings:

NAME	REL.	AGE	ADDRESS	LEGAL HISTORY
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

ADDITIONAL INFORMATION

EVALUATION/SUMMARY

RECOMMENDATIONS

Preliminary Inquiry:

<input type="checkbox"/> Dismissal	<input type="checkbox"/> Referral to other agency
<input type="checkbox"/> Informal Adjustment	<input type="checkbox"/> Warning and Release
<input type="checkbox"/> File Petition	<input type="checkbox"/> Other _____

Reason for recommendation: _____

Custody Recommendation:

<input type="checkbox"/> Release to Parent	<input type="checkbox"/> Release to Guardian	<input type="checkbox"/> Informal Home Detention
<input type="checkbox"/> Formal Home Detention	<input type="checkbox"/> Electronic Surveillance	<input type="checkbox"/> Shelter Care
<input type="checkbox"/> Juvenile Center	<input type="checkbox"/> Not in Custody	<input type="checkbox"/> Other _____

Comments: _____

Predispositional Report:

If juvenile admits to charge, recommendations for disposition (Complete if applicable): _____

Code Conversion Table

[illegible]

SCOPE NOTE

Informal Adjustment

Informal Adjustment.

IC 31-6-4-12:

After the preliminary inquiry, and upon approval by the juvenile court, the intake officer may implement a program of informal adjustment if the officer has probable cause to believe that the child is a delinquent child or a child in need of services. The child and parent, guardian, custodian, or attorney must consent to the program. A program of informal adjustment may not exceed six (6) months, except by approval of the juvenile court which may extend a program of informal adjustment an additional six (6) months.

A monthly user's fee of not less than \$5.00 or more than \$15.00 may be jointly assessed against the child and parent, guardian or custodian for each month the child participates in the program in lieu court cost. IC 31-6-4-12(h)

The local child protection team shall file a report indicating the extent of compliance with the program of informal adjustment at five and eleven months (if a program of informal adjustment is extended with the court. IC 31-6-4-12(g)

If the parents, guardian, or custodian fail to participate in the program, the probation department or the county office of family and children may file a petition for compliance. After notice and a hearing the court may order the parents, guardian or custodian to participate. If the parents, guardian, or custodian again fail to comply may be found in contempt of court. IC 31-6-4-12(b) & (c).

NOTE: See regulations of the Indiana Family and Social Service Agency as related to caseworker/caseload requirements which may provide for a reduced informal adjustment period.

Decisions Under This Statute:

IC 31-6-4-12.

There was no coercion when a referee made the release of a child conditional on the parent's participation in a program of informal adjustment. If the child desires a fact-finding hearing the child may refuse to consent to an informal adjustment program prior to the authorization of a petition. The lack of an adjudicatory hearing for the informal adjustment is not a denial of due process.

Wardship of Nahrwold v. Department of Public Welfare, 427 N.E.2d 474 (Ind. App. 1981)

PROCEDURE

Informal Adjustment

I. Program of informal adjustment.

- A. The intake officer may implement a program of informal adjustment after the following steps have been completed:
 1. intake officer must determine there is probable cause to believe the child is a delinquent child;
 2. the preliminary inquiry, with recommendation for informal adjustment, must be submitted to the (prosecuting attorney) (county office of family and children attorney), unless the intake officer is authorized to submit a recommendation for Informal Adjustment directly to the court.
 3. the child and his parent, guardian or custodian after having been advised of their rights, must consent to the program and sign the same. Consider having the parties sign the program form (D-4.03);
 4. the program of informal adjustment must be approved by the juvenile court. The program cannot exceed six (6) months, but may be extended for an additional six (6) months, which extension must also be approved by the court.
 5. the probation user's fee, if any, should be noted. See IC 31-6-4-12(d). The juvenile court may order each child on informal adjustment to pay not less than \$5.00 or more than \$15.00. The child and parents are jointly liable for the fee.
 6. It appears no specific provision has been made in the statute for the method of approval by the court of a program of informal adjustment. Consider the following:
 - (a) judicial endorsement upon the informal adjustment agreement, FORM D-4.03; USE FORM D-4.03 TOGETHER WITH FORM D-3.04.
 - (b) docketing; **NOTE: All informal adjustments must be docketed as juvenile miscellaneous (JM) according to the Office of State Court Administrator.**
 - (c) order book entry.
 7. Should the parents, guardian or custodian fail to comply, the probation department or office of family and children may file a Rule to Show Cause. See D-12.05 and D-12.06.

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

PROGRAM OF INFORMAL ADJUSTMENT

Whereas, written information indicating that the above named child, _____, is a delinquent child has been filed with the undersigned Intake Officer of said Court, and the undersigned has made a preliminary inquiry and has determined that there is probable cause to believe that said child is a delinquent child.

Therefore, the undersigned Intake Officer has concluded that a program of informal adjustment should be undertaken for a period of _____ months, subject to the consent of said child and the parent, guardian or custodian of said child, and subject to the approval of said Court, whereby the undersigned Intake Officer shall assume supervision over said child, and said child shall observe and obey the following rules:

1. You are to obey all town, city, county, state and federal laws and ordinances, and you shall be guilty of no acts of bad conduct of any kind or character;
2. You shall report to the Probation Department at such times and places as shall be directed by such Probation Department. Any change of address, school or employment must be promptly reported to the Probation Department;
3. You are to participate in programs and activities specifically assigned and outlined as part of your program;
4. You are to have the permission of your parents for any activity which requires you to be away from your home;
5. You must obey your parents at all times;
6. You shall not possess or consume alcoholic beverages or illegal drugs;
7. You are to be in the confines of your home by _____ p.m., unless you are in the presence of one or both of your parents or in the presence of a responsible person with the prior approval of your parents or the Probation Officer;
8. You are to very careful as to the people with whom you associate, and you shall not associate with any persons who are in any sort of trouble with the law. You shall not attend places of ill repute;
9. You are to attend school regularly with no absence or tardiness of an unexcused nature, and you shall diligently apply yourself to your work and conduct yourself according to school policy. If you are out of school, you are to find suitable employment with reasonable hours;
10. You are to make restitution in the amount of \$ _____ to _____

_____ payable as follows:

11. You and your parents are responsible for the payment of a monthly probation user's fee of \$ _____ to _____

_____.

12. Special Terms: _____

Dated: _____

Intake Officer

I have read the foregoing program for informal adjustment, and I consent and agree to it.

Child

The undersigned, parent, guardian or custodian(s) of said child, hereby consent and agree to the same.

The above and foregoing program of informal adjustment is approved by the Court.

Dated: _____

Judge

Code Conversion Table

[illegible]

SCOPE NOTE
(Instituting Formal Proceedings)

Parties to juvenile delinquency proceedings, IC 31-6-4-9(g):

- (1) child;
- (2) parent(s), guardian(s) or custodian(s) of child;
- (3) Prosecuting Attorney.

All rights of parties provided in the Indiana Rules of Trial Procedure apply in juvenile delinquency proceedings.

Decision by prosecutor or Office of Family and Children attorney to file delinquency petition. IC 31-6-4-9(a):

The prosecutor may file a petition alleging that a child is a delinquent child. The attorney for the county Office of Family and Children may file a petition alleging that a child is a status delinquent.

Court approval to file petition.

IC 31-6-4-9(b):

"The juvenile court shall consider the preliminary inquiry and the evidence of probable cause. The court shall approve the filing of the petition if there is probable cause to believe that the child is a delinquent child and that it is in the best interests of the child or the public that the petition be filed."

NOTE: A court order approving the filing of a delinquency petition may be entered by the court *ex parte*, without notice to child, parent, or counsel. Also consider the question of what documentation and record is necessary to support the determination of probable cause. Some judges may regard the information and recitals in the intake officer's report of preliminary inquiry as sufficient and others may require supporting affidavits or testimony. Form D-5.03 has been designed in such a manner as to require the attorney requesting authorization to describe the evidence of probable cause relied upon.

Two elements essential for the court to approve the filing of a delinquency petition based on an alleged criminal act are:

1. finding of probable cause to believe that the child committed an act that would be a crime if committed by an adult; and
2. finding that it is in the best interests of the child or the public that the petition be filed.

NOTE: The Fourth Amendment requires a "prompt" judicial determination of probable cause as prerequisite to pretrial detention following a warrantless arrest. "Prompt" means within 48 hours generally. However, 48 hours may not suffice in certain instances. If the arrested person is held over 48 hours without a probable cause determination, the state must show a "bona fide emergency" or "other extraordinary circumstance". Weekends do not qualify as an "extraordinary circumstance". **County of Riverside v. McLaughlin**, 500 U.S. 44, 111 S. Ct. 1661, 114 L.Ed.2d 49 (1991).

Three elements essential for the court to approve the filing of a delinquency petition based on an act of delinquency other than an act that would be a crime if committed by an adult are:

1. finding of probable cause to believe that the child committed an act of delinquency other than an act that would be a crime if committed by an adult;
2. finding that the child needs care, treatment, or rehabilitation that he is not receiving, that he is unlikely to accept voluntarily, and that is unlikely to be provided or accepted without the coercive intervention of the

court; and

3. finding that it is in the best interests of the child or the public that the petition be filed.

Request for a child to be taken into custody:

If filing of the petition is approved, the person filing may request in writing that the child be taken into custody. He shall support this request with sworn testimony or affidavit. The court may grant the request if it makes written findings of fact upon the record that a ground for detention exists under IC 31-6-4-5(g). If the juvenile court grants the request to have the child taken into custody, it shall proceed in accordance with 31-6-4-5(f). IC 31-6-4-9(e).

A delinquency petition must be verified and contain the information specified in the statute.

IC 31-6-4-9(c):

The petition shall be verified and be entitled "In Matter Of. . ., A Child Alleged to be a Delinquent Child," and must contain the following information:

1. a citation to the section of this article that gives the juvenile court jurisdiction in the proceeding. **[NOTE: The Benchbook Committee believes that this section refers to IC 31-6-2-1.1(a)];**
2. a citation to the statute that the child is alleged to have violated **[NOTE: The Benchbook Committee believes that this section refers to IC 31-6-4-1(a) and the applicable statute allegedly involved];**
3. a concise statement of the facts upon which the allegations are based, including the date and location at which the alleged act occurred;
4. the child's name, birth date and address, if known;
5. the name and address of the child's parent, guardian, or custodian, if known; and
6. the name and title of the person signing the petition.

As a general rule, a petition must be filed in order to require the participation of a parent or responsible adult in a program of care, treatment or rehabilitation for a child:

1. A petition is not required under the following circumstances:
 - a. if the parents are summoned and appear at the initial hearing;
 - b. are advised that they may be required to participate in such a program;
 - c. have an opportunity to respond to the proposed program;
 - d. agree to participate in program;
 - e. and if the program is then incorporated in a court order. **[Note: The order would then be binding on the responsible adult and may be enforced by the court's contempt power].**
2. If the responsible adult refuses to consent to such an order, a "Parental Participation Petition" would then be required.
3. The petition may be filed either at the beginning of the juvenile proceedings or at any time thereafter.
4. The petition may also be incorporated as a part of the petition concerning the child.

A summons must be issued for the child, parent, guardian, custodian or other persons.

IC 31-6-7-4:

After a delinquency petition has been filed, the juvenile court shall set a time for the initial hearing prescribed by IC 31-6-4-13. A summons shall be issued for the child, for his parent, guardian, custodian or guardian ad litem, and for any other person necessary. A copy of the delinquency petition must accompany each summons. The clerk shall issue summons pursuant Indiana Trial Rule 4. Service may be made upon any person pursuant to Indiana Trial Rule 4.1. Personal service must be made at least three (3) days before the hearing; service by mail must be sent at least ten (10) days before hearing. Under certain circumstances, service by publication is authorized.

NOTE: Service of summons can be waived by appearance pursuant to IC 31-6-7-5(a).

A seven-day (7) time limit exists for the filing of a delinquency petition in cases in which a child is in detention. If the child is in detention, and the seven day time limit is not followed, the child shall be released on his own recognizance or to his parents, guardians or custodians. IC 31-6-7-6(g).

Docketing a juvenile proceeding:

If the child is not in custody, a juvenile cause should be formally docketed and a cause number should be assigned by the clerk, either upon the filing with the court of a request for authorization to file a delinquency petition or upon the entry of the court order authorizing such filing. The Benchbook Committee recommends that the attorney filing the request for such authorization should file or present the following documents:

1. written intake information and prosecutor's order for preliminary inquiry;
2. written report of preliminary inquiry prepared by intake officer;
3. request for taking of child into custody, if any; and
4. order on detention hearing, if held.

If the child is in detention, the juvenile court is required to hold a detention hearing sua sponte within forty-eight (48) hours (excluding Saturdays, Sundays and legal holidays) after the child is taken into custody. A probable cause determination must be made within forty-eight (48) hours if it was not made before the child was placed in detention.

A juvenile "runaway" i.e., a child alleged to be delinquent under IC 31-6-4-1(a)(2), may only be held in secure detention twenty-four (24) hours (excluding Saturdays, Sundays, and nonjudicial days). IC 31-6-4-6.5.

The twenty (20) day time limitation for hearings begins to run when the court authorizes the filing of a delinquency petition. **Matter of Tacy**, 427 N.E.2d 919 (Ind. App.. 1981); **State ex rel. Hirt v. Marion Superior Court**, 451 N.E.2d 308 (Ind. 1983).

The filing of the delinquency petition triggers the running of the one-year time limit for trial provided by CR 4(C) and IC 31-6-7-6(e). **State ex rel. Hirt v. Marion Superior Court**, 451 N.E.2d 308 (Ind. 1983).

PROCEDURE
(Instituting Formal Proceedings)

I. Acquisition of jurisdiction after completion of the procedures in section D-3.00 et seq.

- A. The court must approve the filing of a delinquency petition. The prosecutor may request authorization in any kind of delinquency case, including status offenders. With regard to status offenders, either the prosecutor or department of public welfare attorney may file a request for custody order.

USE FORM D-5.03

- B. The court approves the filing of the delinquency petition and finds probable cause.

USE FORM D-5.04 ORDER APPROVING FILING OF DELINQUENCY PETITION, CRIME
DELINQUENT.

USE FORM D-5.05 ORDER APPROVING FILING OF DELINQUENCY PETITION, STATUS
DELINQUENT.

- C. Verified delinquency petition:

USE FORM D-5.06

- II. After filing of the delinquency petition, an order must be entered by the court setting the delinquency petition for an initial hearing. The Court may order the child taken into custody.

USE FORM D-5.07

- III. Acquisition of jurisdiction over a parent, guardian or custodian to require their participation in a program of care, treatment or rehabilitation for a child.

- IV. The clerk issues a summons for the child and parent, guardian or custodian.

USE FORM D-5.08

STATE OF INDIANA

COURT

In The Matter _____

Case No. _____

A Child Alleged to be a Delinquent Child

REQUEST FOR CUSTODY ORDER

The undersigned (Deputy) Prosecuting Attorney (Attorney for County Department of Public Welfare) respectfully requests that the Court enter an order for taking of said child into custody. Your petitioner alleges that a ground for detention exists under IC 31-6-4-5(g) in that:

- () the child is unlikely to appear for subsequent proceedings;
- () detention is essential to protect the child or the community;
- () the parent, guardian or custodian cannot be located or is unable or unwilling to take custody of the child; or
- () the child has a reasonable basis for requesting that he not be released.

() Said child (is) (is not) in custody at the time of this request.

(Your petitioner will support this request with sworn testimony.)

(Your petitioner supports this request with affidavit attached hereto.)

Dated: _____

 (Deputy) Prosecuting Attorney
 (Attorney for County Office of Family and Children)

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER APPROVING FILING OF DELINQUENCY PETITION
CRIME DELINQUENT**

Comes now, _____,

() Deputy/Prosecuting Attorney.

() Attorney for the _____ County Office of Family and Children and files a request to file a petition alleging that _____ is a delinquent child.

A written information signed by _____ and prosecutor's request for preliminary inquiry, heretofore filed with an Intake Officer of this Court, _____ (Probation Officer) (Caseworker) and said Intake Officer's report of preliminary inquiry are filed and made a part of the record.

The Court having considered the preliminary inquiry and the evidence of probable cause finds probable cause to believe that said child is a delinquent child in that:

said child committed an act that would be an offense if committed by an adult, _____, and that it is in the best interests of the child (and) (or) the public that the delinquency petition be filed.

The Court approves the filing of said petition.

So ordered this _____ day of _____, 19 ____.

Judge

STATE OF INDIANA
_____ COURT

In The Matter Of _____

_____ Case No. _____
A Child Alleged to be a Delinquent Child

**ORDER APPROVING FILING OF DELINQUENCY PETITION
STATUS DELINQUENT**

Comes now, _____,

() Deputy/Prosecuting Attorney.

() Attorney for the _____ County Department of Public Welfare,

and files a request to file a petition alleging that _____ is a delinquent child.

A written information signed by _____ and prosecutor's request for preliminary inquiry, heretofore filed with an Intake Officer of this Court, _____

_____ and said Intake Officer's report of preliminary

(Probation Officer) (Caseworker)

are filed and made a part of the record.

The Court having considered the preliminary inquiry and the evidence of probable cause finds probable cause to believe that said child is a delinquent child in that said child:

() leaves home without reasonable cause and without permission of (his) (her) parent, guardian, or custodian who requests said child's return;

() Violates the compulsory school attendance law (IC 20-8.1-3);

() habitually disobeys the reasonable and lawful commands of (his) (her) parent, guardian, or custodian, or

() has committed a curfew violation;

and that said child needs care, treatment or rehabilitation that he is not receiving, and that said child is unlikely to accept voluntarily, and that is unlikely to be provided or accepted without the coercive intervention of the Court, and that it is the best interests of the child (and (or) the public that the delinquency petition be filed.

The Court approves the filing of said petition.

Dated: _____

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

PETITION ALLEGING DELINQUENCY

Your petitioner alleges and says:

1. The above name child, _____, was born _____ and is _____ years of age.
2. That said child resides at _____
with _____.
3. That the names and addresses of the child's parents, guardian or
custodian are as follows:

Name
AddressParent, Guardian,
or Custodian

_____	_____	_____
_____	_____	_____
_____	_____	_____

4. The citation to the section of the Indiana Juvenile Code that gives this Court jurisdiction in this proceeding is
IC 31-6-2-1.1(a).
5. That said child is a delinquent child as defined in IC 31-6-4-1, in that:

 All contrary to _____

1. Specify applicable criminal statute, if any, if appropriate.
2. Insert IC 20-8.1-3 for truancy cases.
3. Insert IC 31-6-4-2 for curfew violators.

Wherefore, the petitioner prays for a hearing to determine if said child is a delinquent child and for any and all relief proper in the premises.

The undersigned affirms under the penalties of perjury that the foregoing statements and representations are true.

Dated: _____

Signature of Petitioner

Name and title of Person
Signing Petition

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER SETTING INITIAL HEARING ON DELINQUENCY PETITION
AND FOR ISSUANCE OF SUMMONS**

The Court sets this cause for Initial Hearing on _____ at ____ (A.M.) (P.M.) and orders the Clerk of the Court to issue a summons for said child, _____ and for the following parent, guardian, custodian, guardian ad litem or other persons:

Name	Relationship
Address	

Dated: _____

Judge

ORDER FOR TAKING CHILD INTO CUSTODY

The Court having heretofore granted a request for taking of said child into custody, the Court now orders the Clerk to endorse upon said summons an order for the officer serving same to take said child into custody at once and deliver the child to: _____

_____ for detention at _____ until further order of the Court.

So ordered this ____ day of _____, 19__.

Judge

STATE OF INDIANA
_____ COURT

In The Matter Of _____

A Child Alleged to be a Delinquent Child

Case No. _____

SUMMONS

To: _____

(Insert name, address of child and the parent, guardian or custodian of the child above)

You are hereby notified that a Petition Alleging Delinquency, attached hereto, has been filed in the above Court, charging the above named child with being a delinquent child, and you are hereby commanded to appear before the Judge of said Court at the Court House, Room _____, in _____ Indiana, on the _____ day of _____, 19____, at _____ o'clock _____.M., for an Initial Hearing and such further proceedings as may be ordered by the Court in this matter.

If you fail to appear as above commanded, you may be held in contempt of Court and a warrant may be issued for your person by the Court.

Dated this _____ day of _____, 19____.

(SEAL) _____

Clerk

Court

By: _____
Deputy Clerk

ENDORSEMENT FOR TAKING CHILD INTO CUSTODY

To the Sheriff of _____ County, Indiana:

By order of the above Court, you are hereby commanded to take the above named child into custody and deliver the child to: _____ for detention in the _____ until further order of the Court.

Dated this _____ day of _____, 19____.

Clerk

Court

By: _____
Deputy Clerk

ACKNOWLEDGMENT OF SERVICE OF SUMMONS

The undersigned hereby waives the service of the above summons and voluntarily agrees to appear in Court at the time and place set forth above.

Code Conversion Table

CHAPTER 6: Initial Hearing		
Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
1	31-6-4-13	31-37-12-1 et seq specifically 31-37-12-5
1	31-6-7-2	31-37-12-3 31-32-4-2
1	31-6-7-2(c) 31-6-4-18	31-32-4-4 31-40-1-1 et seq
1	31-6-7-3	31-32-5-1 <u>and</u> 31-32-5-2
3	31-6-4-13	31-37-12-2
3	31-6-7-6(a)	31-37-11-1
3	31-6-7-6	31-37-11-2
3	31-6-7-6(e)	31-37-11-5
3	31-6-7-6	31-37-11-2
4	31-6-4-13(c)	31-37-12-3
4	31-6-4-13(d)	31-37-12-4
4	31-6-4-15.3	31-37-18-1 through 18-9
4	31-6-4-15.4(a)	31-37-19-1
4	31-6-4-15.4(b)	31-37-19-2
4	31-6-4-15.4(c)	31-37-19-3
4	31-6-4-15.6(a)	31-37-19-7
4	31-6-4-15.6(b)	31-37-19-7
4	31-6-4-15.6(c)	31-37-19-8
4	31-6-4-15.6(d)	31-37-19-8
4	31-6-4-15.7	31-37-19-27
4	31-6-4-15.8	31-37-19-24
4	31-6-4-15.9(a)	31-37-19-6

CHAPTER 6: Initial Hearing

Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
4	31-6-4-15.9(b)	31-37-19-5 31-37-19-9
4	31-6-4-15.9(c)	31-37-19-4
4	31-6-4-15.9(d)	31-37-19-13 31-37-19-14
4	31-6-4-15.9(e)	31-37-19-15 31-37-19-16
4	31-6-4-15.9(f)	31-37-19-17
4	31-6-4-15.9(g)	31-37-19-18
4	31-6-4-15.9(h)	31-37-19-19
4	31-6-4-15.9(i)	31-37-19-20
4	31-6-4-15.9(j)	31-37-19-12
4	31-6-4-15.9(k)	31-37-19-21
4	31-6-4-15.9(l)	31-37-19-22
4	31-6-4-15.9(m)	31-37-19-23
4	31-6-4-15.9(n)	31-37-19-10
4	31-6-4-13(f)	31-37-12-6 see also 31-37-19-24
5	31-6-4-13(g)	31-37-12-7
5	31-6-4-13(h)	31-37-12-8 31-37-12-9 31-37-12-10
5	31-6-4-13(i) 31-6-4-13(j)	31-37-12-9 31-37-12-10
5	31-6-4-14(e)	31-37-13-5
5	31-6-4-18.5	def.: 31-9-2-75 31-37-19-26 31-37-20-6

CHAPTER 6: Initial Hearing

Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
5	31-6-14	def.: 31-9-2-21 31-9-2-80 31-9-2-103 31-9-2-113 Local Coordinating Committee 31-38-1 31-38-2
6	31-6-7-3	31-32-5-1 and 31-32-5-2
7	31-6-7-3	31-32-5-1 and 31-32-5-2
7	31-6-2-4	31-30-3-1 through 31-30-3-6
7	31-6-4-13(e) and (f)	31-37-12-5 and 31-37-12-6
8	31-6-4-1(b)(1)	31-37-1-1 and 31-37-1-2
9	31-6-7-3	31-32-5-1 and 31-32-5-2
10	31-6-4-13(e) and (f)	31-37-12-5 and 31-37-12-6
10	31-6-4-1(b)(2)	31-37-2-1 and specifically: Leaving Home 31-37-2-2 Failure to Attend School 31-37-2-3 Disobedience 31-37-2-4 Curfew Violation 31-37-2-5 Alcoholic Beverages 31-37-2-6

CHAPTER 6: Initial Hearing		
Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
11	31-6-7-3	31-32-5-1 and 31-32-5-2
11	31-6-2-4	31-30-3-1 through 31-30-3-5
13	31-6-8-1	31-39-1-1 31-39-1-2 31-39-2

SCOPE NOTE AND PROCEDURE

Initial Hearing on Petition

I. GENERAL INFORMATION

Initial hearing:

IC 31-6-4-13.

When reading charges to juvenile in delinquency proceeding, court was not required to read statutes juvenile was accused of violating. **M.R. v. State**, 605 N.E.2d 204. (Ind. App., 1992)

Right to counsel:

IC 31-6-7-2.

Appointment of counsel for child who is alleged to be delinquent is not conditioned on child's indigency; rather, court should consider only whether child has attorney and whether child has waived his right to counsel. **Woolf v. State**, 545 N.E.2d 590 (Ind. App., 1989).

Failure to appoint counsel to represent 17-year-old defendant prior to hearing on motion to waive jurisdiction of juvenile court was error regardless of who might ultimately pay for cost of appointment and was such as to make waiver unlawful and require reversal of conviction obtained in superior court subsequent to waiver. **Adams v. State**, 411 N.E.2d 160 (Ind. App., 1980).

The statute conditions the appointment of counsel upon the determination of only two factors: (1) whether the child has an attorney and (2) whether the child has waived his right to counsel in accordance with IC 31-6-7-3. **Adams v. State**, 411 N.E.2d 160 (Ind. App., 1980).

IC 31-6-7-2(c): Payment for counsel shall be made under IC 31-6-4-18

USE FORM D-6.02 Order on Appointment of Attorney

Waiver of rights:

IC 31-6-7-3:

Any rights guaranteed to the child by law maybe waived only by:

- (1) Child and child's counsel;
- (2) Child and parent, guardian, guardian ad litem or custodian of the child; or
- (3) Child, if emancipated.

Statute that provides that child cannot unilaterally waive constitutional rights permits waiver of juvenile's rights by either juvenile's counsel or his parent or guardian and statute does not authorize minor to waive his own rights; strict compliance with requirement is necessary to safeguard rights of juveniles. **Beldon v. State**, 657 N.E.2d 1241 (Ind. App. 1995).

Strict compliance with statute governing waiver of constitutional rights of a child is required in order to protect child's rights. **Hickman v. State**, 654 N.E.2d 278 (Ind. App. 1995).

This section does not authorize unilateral waiver of rights by child in delinquency proceedings, and non-attorney adult who joins the child in the waiver of rights must have no interest adverse to the child. **Borum v. State**, 434 N.E.2d 581 (Ind. App., 1982).

Where although minor was legal ward of county welfare department at time of incident he actually resided with his grandmother and father, his father, with whom minor was afforded opportunity for consultation prior to waiving

rights, was custodial parent. **Graham v. State**, 464 N.E.2d 1 (Ind. 1984).

"Meaningful consultation" requirement for juvenile waiver of Miranda rights is additional to required safeguards that waivers be knowingly, voluntarily, and intelligently made, and may be satisfied by actual consultation or meaningful nature or by express opportunity for that consultation. **Foster v. State**, 633 N.E.2d 337 (Ind. App. 1994), transfer denied.

There was a valid waiver of rights when the child signed a waiver form and the father signed the same form only as a witness. The facts in this case taken as a whole show the father "knowingly and voluntarily waived his son's rights." **Sills v. State**, 463 N.E.2d 228 at 231 (Ind. 1984).

A seventeen year old defendant was allowed meaningful consultation with his parent "in private for approximately twenty minutes," *Id.* at 592, although the juvenile remained in an interrogation room three hours before his father arrived and his father advised him to cooperate with the police. **Harden v. State**, 576 N.E.2d 590 (Ind. 1991).

A sixteen year old defendant was allowed meaningful consultation after discussion in private for approximately 20 minutes with his mother. A confession after this consultation was voluntary under Indiana Code 31-6-7-3(d) even though the police stated that the juvenile was not "identified" as a participant in the crime and the mother may not have understood that her son "was still in jeopardy of prosecution even though he had not been identified." **Smith v. State**, 580 N.E.2d 298, 301 (Ind. App., 1991).

II. TIME LIMITS:

The Court shall hold an initial hearing on each petition. IC 31-6-4-13. A petition alleging delinquency must be filed within seven (7) days (excluding Saturdays, Sundays and legal holidays) after the child is taken into custody. IC 31-6-7-6(a).

If a child is in detention, a fact-finding or waiver hearing on the petition shall be held within twenty (20) days (excluding Saturdays, Sundays, and legal holidays) after the petition has been filed. [60 days if the child is not in detention.] IC 31-6-7-6.

Speedy trial provision of Juvenile Code, rather than criminal rules, governs speedy trial issue as to juvenile matters. **C.W. v. State**, 643 N.E.2d 915 (Ind. App., 1994).

The filing of the delinquency petition starts the running of the one year time limit for trial provided by IC 31-6-7-6(e). **State ex rel. Hirt v. Marion Superior Court**, 451 N.E.2d 308 (Ind. 1983).

Delay from juvenile's agreement to participate in informal adjustment program and failure to fulfill its conditions was chargeable to juvenile under speedy trial statute. **C.W. v. State**, 643 N.E.2d 915 (Ind. App., 1994).

The 20 day time limitation does not begin to run until the Court authorizes the filing of a delinquency petition. **Matter of Tacy**, 427 N.E.2d 919 (Ind. App., 1981); **State ex rel. Hirt v. Marion Superior Court**, 451 N.E.2d 308 (Ind. 1983).

Noncompliance with the 20 day time limit entitles a juvenile to release from detention, but would not warrant dismissal of case or result in juvenile court losing jurisdiction. **Brown v. State**, 448 N.E.2d 10 (Ind. 1983); **Gerrick v. State**, 451 N.E.2d 327 (Ind. 1983); **Spikes v. State**, 460 N.E.2d 954 (Ind. 1984).

IC 31-6-7-6 sets a time limit for waiver or fact finding hearing, but not initial hearing. **Partlow v. State**, 453 N.E.2d 259 (Ind. 1983)

III. PROCEDURE:

- A. The Court shall first determine whether an attorney for the child has been waived or previously obtained. If not, an attorney for the child shall be appointed without regard to indigency. IC 31-6-4-13(c)

Appointment of counsel for child who is alleged to be delinquent is not conditioned on child's indigency; rather, court should consider only whether child has attorney and whether child has waived his right to counsel. **Woolf v. State**, 545 N.E.2d 590 (Ind. App., 1989).

- B. The court shall next determine whether the prosecutor intends to seek a waiver of juvenile jurisdiction. IC 31-6-4-13(d). **NOTE: The court should not accept an admission or denial from the juvenile if the prosecutor indicates that waiver is intended.** If waiver is sought, further juvenile proceedings are suspended until the waiver question is resolved. **Partlow v. State**, 453 N.E.2d 259 (Ind. 1983).

Counsel must be appointed to represent juvenile on waiver petition; failure to do so constitutes error. **Adams v. State**, 451 N.E.2d 160 (Ind. App., 1980).

For Scope Notes, Procedures, and Forms on Waiver see Delinquency Section 7 of this benchbook.

- C. The court shall next inform the child, parent, guardian, or custodian of their rights, obligations, and dispositional alternatives available to them under the code. IC 31-6-4-13(e).

For Dispositional Alternatives, see: IC 31-6-4-15.3, 15.4, 15.6, 15.7, 15.8, and 15.9

It is error not to advise child and parent of rights and dispositional alternatives. **Matter of Lemond**, 413 N.E.2d 228 (Ind. 1980).

- D. Court advisement to parents regarding parental participation. IC 31-6-4-13(f):

The juvenile court shall inform the parent or guardian of the estate that if the child is adjudicated a delinquent child:

- (1) he or the custodian of the child may be required to participate in a program of care, treatment, or rehabilitation for the child;
- (2) he may be held financially responsible for any services provided for the child or himself; and
- (3) he or the custodian of the child may controvert any allegations made at the dispositional or other hearing concerning his participation or he may controvert any allegations concerning his financial responsibility for any services that would be provided.

- E. If waiver is not requested by the State, or is denied by the Court, the Court should then determine if the juvenile wishes to admit or deny the allegations of the petition. IC 31-6-4-13(g). If the juvenile admits the allegations in the petition, the court may want to determine if the admission was voluntary (if the child be of an age of understanding) and must determine if there was a factual basis for said admission.

USE FORM D-6.03 if the allegations are admitted (crime delinquent).

USE FORM D-6.04 if the allegations are admitted (status delinquent).

USE FORM D-6.05 if the allegations are denied.

See also "Dialogue for Hearing" which is found in Delinquency section 8 of this Benchbook.

- F. If the child admits the allegations, with the consent of all parties, the Court may proceed to immediate dispositional hearing. IC 31-6-4-13(h). If the child denies the allegations, with the consent of all parties, the Court may proceed to immediate fact-finding hearing. IC 31-6-4-13(i) and (j).

- G. In all cases where a finding of delinquency is based on a delinquent act that would be a felony if committed by an adult, the juvenile court shall state in the findings the specific statute that was violated and the class of felony had it been committed by an adult. IC 31-6-4-14(e).

NOTE: (when juvenile detention or placement is ordered):

Legal Settlement for school purposes: The juvenile court shall make a finding of legal settlement of the child in a dispositional order, modification order or other decree when the court places a child or changes the placement of a child. This affects transfer tuition fees. IC 31-6-4-18.5; IC 20-8.1-6.1-1 [Legal Settlement]. The juvenile court shall, within ten days of placement, comply with the reporting requirements under IC 20-8.1-6.1-5.5 concerning the legal settlement of the child.

NOTE: (when considering restrictive placement at dispositional hearing):

If judge or probation officer believes that a restrictive placement will be made, the local coordinating committee *may* be convened according to IC 31-6-14.

STATE OF INDIANA

COURT

In The Matter Of _____

_____ Case No. _____

A Child Alleged to be a Delinquent Child

ORDER ON APPOINTMENT OF ATTORNEY

The State of Indiana appears by _____, (Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child, _____, appears in person and without counsel. The parent(s) [(guardian) (custodian)] appear in person. Also, (Intake Officer) _____.

The delinquency petition comes on for Initial Hearing.

The Court finds that said child does not have an attorney representing the child's interests, that the right to an attorney has not been waived in the manner provided by IC 31-6-7-3, and that an attorney must be appointed for said child.

The Court, therefore, appoints _____ as attorney to represent said child, and hearing is continued to the _____ day of _____, 19____, at _____ o'clock _____.M., and the parties are ordered to appear for said hearing.

Clerk is directed to notify the attorney of appointment and parents and child are ordered to contact said attorney for an appointment forthwith.

So ordered this ____ day of _____, 19____.

Judge

STATE OF INDIANA

COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER ON INITIAL HEARING ON DELINQUENCY PETITION
CRIME DELINQUENT (No Waiver Requested)**

The State of Indiana appears by _____, (Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child, _____, appears in person and with/without counsel. The parent(s) (guardian) (custodian) appear in person. Also, (Intake Officer) _____, _____ appears.

The delinquency petition comes on for Initial Hearing.

The Court now finds that:

- () attorney _____ appears for child; or
() child and parents waive the child's right to an attorney pursuant to IC 31-6-7-3.

The Court next determines that:

- () the delinquency charged is not subject to waiver under IC 31-6-2-4;
() the Prosecutor does not intend to seek a waiver of juvenile jurisdiction;

The Court having informed the child and said parent(s), guardian or custodian of the matters required by IC 31-6-4-13(e) and (f), now finds that the child is _____ years of age and that said child voluntarily admits the allegations of the delinquency petition.

[Use following paragraph if felonious act admitted, otherwise strike it]

The Court finds that the act(s) admitted by the child would be a felony if committed by an adult. The Court finds that the statute(s) violated by the child, and the class of the felony, if committed by an adult, (is) (are):

Statutory Citation

Class of Felony:

Upon such finding it is now adjudged by the Court that said child is a delinquent child as defined by IC 31-6-4-1(b)(1).

[Include the following applicable paragraphs:]

- A) The Court orders _____ to prepare and file a Predispositional Report and the Court schedules a Dispositional Hearing in this case for the _____ day of _____ 19____, at _____ o'clock _____.M. and further orders:

-
- B) The legal settlement of the child is _____. The _____
County Office of Family and Children shall provide notice required by IC 20-8.1-6.1-5.5.
- C) The Court refers the possibility of a restrictive placement of the child for review by local coordinating committee.
- D) By agreement of the parties, and with the consent of the child and child's parent(s), an immediate Dispositional Hearing is requested and held.

So ordered this _____ day of _____, 19_____.

Judge

STATE OF INDIANA

COURT

In The Matter of _____

A Child Alleged to be a Delinquent Child

Case No. _____

**ORDER ON INITIAL HEARING ON DELINQUENCY PETITION
CRIME DELINQUENT (Waiver Requested)**

The State of Indiana appears by _____, (Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child, _____, appears in person and with/without counsel. The parent(s) (guardian) (custodian) appear in person. Also, (Intake Officer) _____, _____ appears.

The delinquency petition comes on for Initial Hearing.

The Court now finds that:

- () attorney _____ appears for child; or
() child and parents waive the child's right to an attorney pursuant to IC 31-6-7-3.

The Court next determines that the State of Indiana intends to seek waiver of juvenile court jurisdiction.

This case is now set for Waiver Hearing for the ____ day of _____, 19____, at _____ M.

The Court now finds as follows:

The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide notice required by IC 20-8.1-6.1-5.5.

So ordered this ____ day of _____, 19____.

Judge

STATE OF INDIANA

COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER ON INITIAL HEARING ON STATUS DELINQUENCY PETITION

The State of Indiana appears by _____,
 (Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
 _____, appears in person and with/without counsel. The parent(s) (guardian) (custodian)
 appear in person. Also, (Intake Officer): _____ appears.

The delinquency petition comes on for Initial Hearing.

The Court having informed the child and said parent(s), guardian or custodian of the matters required by IC 31-6-4-13(e) and (f), now finds that the child is ____ years of age and that said child voluntarily admits the allegations of the delinquency petition. Upon such finding it is now adjudged by the Court that said child is a delinquent child as defined by IC 31-6-4-1(b)(2).

[Include the following applicable paragraphs]

- A) The Court orders _____ to prepare and file a Predispositional Report and the Court scheduled a Dispositional Hearing in this cause for the ____ day of _____ 19____, at _____ o'clock ____ M. and further orders:

- B) The Court now finds the legal settlement of the child is _____. The _____ County Office of Family and Children shall provide notice required by IC 20-8.1-6.1-5.5.
- C) The Court refers the possibility of a restrictive placement for review by local coordinating committee.
- D) By agreement of the parties, and with the consent of the child and child's parent(s), an immediate Dispositional Hearing is requested and held.

Dated: _____

Judge

STATE OF INDIANA

COURT

In The Matter Of _____ Case No. _____

A Child Alleged to be a Delinquent Child

**ORDER ON INITIAL HEARING ON DELINQUENCY PETITION
(Denial of Delinquency)**

The State of Indiana appears by _____, (Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child, _____, appears in person and with/without counsel. The parent(s) (guardian) (custodian) appear in person. Also, (Intake Officer): _____, appears.

The delinquency petition comes on for Initial Hearing.

The Court now finds that:

- ☐ attorney _____ appears for child; or
☐ child and parents waive the child's right to an attorney pursuant to IC 31-6-7-3.

The Court next determined that:

- ☐ the delinquency charge is not subject to waiver under IC 31-6-2-4;
☐ the Prosecutor does not intend to seek a waiver of juvenile jurisdiction.

[If Waiver is not requested, or if waiver has been denied, then proceed as follows:]

The Court having informed the child and said parent(s), guardian, or custodian of the matters required by IC 31-6-4-13(e) and (f) now finds that said child denies the allegations of the delinquency petition.

- A) The Court now orders a Fact-finding Hearing held on this cause for the ____ day of _____, 19 ____, at _____ o'clock ____ M. and further orders that:

- B) By agreement of parties, an immediate Fact-finding Hearing is requested and held.

- C) The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide notice required by IC 20-8.1-6.1-5.5.

So ordered this ____ day of _____, 19 ____.

 Judge

Code Conversion Table

CHAPTER 7: Waiver of Juvenile Jurisdiction		
Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
1	31-6-2-4	31-30-3
1	31-6-2-4(b)	31-30-3-2
1	31-6-2-4(c)	31-30-3-3
1	31-6-2-4(e)	31-30-3-5
1	31-6-2-4(d)	31-30-3-4
2	31-6-2-1.1(d)	31-30-1-4
2	31-6-2-4(f)	31-30-3-6
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3	31-6-4-1 and 31-6-4-2	31-37-1 through 31-37-3
4	31-6-7-6	31-37-11
5	31-6-2-4(j)	31-30-3-10
6	31-6-9-2	31-31-3
8	31-6-2-4(f)	31-30-3-6
8	31-6-2-4(j)	31-30-3-10
8	31-6-4-13(d)	31-37-12-4
9	31-6-2-4(b)	31-30-3-2
11	31-6-2-4(b)	31-30-3-2
13	31-6-2-4(c)	31-30-3-3
14	31-6-2-4(c)	31-30-3-3
16	31-6-2-4(d)	31-30-3-4
17	31-6-2-4(d)	31-30-3-4
19	31-6-2-4(e)	31-30-3-5
20	31-6-2-4(e)	31-30-3-5
22	31-6-2-4(f)	31-30-3-6
23	31-6-2-4(f)	31-30-3-6

SCOPE NOTE
Waiver of Juvenile Jurisdiction

I. WAIVER: STATUTORY AUTHORITY AND PREREQUISITES

Waiver hearings: The statutory basis for waiver of juvenile court jurisdiction is IC 31-6-2-4.

A. Nonpresumptive Waiver arises under **IC 31-6-2-4(b)** when a child fourteen (14) years or older is charged with an act which is either: (1) heinous or aggravated with greater weight given to acts against the person than to acts against property; or (2) that is a part of a repetitive pattern of delinquent acts (even though less serious).

In a "Nonpresumptive Waiver" proceeding under IC 31-6-2-4(b) the burden is upon the State to prove:

- (1) the child was fourteen (14) years of age or older when the act charged was allegedly committed;
- (2) there is probable cause to believe that the child committed the act;
- (3) the child is beyond rehabilitation under the juvenile justice system; and
- (4) it is in the best interests of the safety and welfare of the community that the child stand trial as an adult.

B. Nonpresumptive Waiver arises under **IC 31-6-2-4(c)** when a child sixteen (16) years or older is charged with an act which if committed by an adult would be a felony under the Controlled Substances Act, IC 35-48-4, and it is in the best interests of the safety and welfare of the community for the child to stand trial as an adult.

NOTE: If the violation of the Controlled Substances Act is a Class A or Class B felony, presumptive waiver could be sought under IC 31-6-2-4(e).

C. Presumptive Waiver arises under **IC 31-6-2-4(d)** when a child ten (10) years old or older [but less than age 16] is charged with an act which would be **murder** if committed by an adult.

NOTE: If the child, who is sixteen (16) years of age or over and is charged with murder, the juvenile court does not have jurisdiction.

D. Presumptive Waiver arises under **IC 31-6-2-4(e)** when a child sixteen (16) years or older is charged with an act which if committed by an adult would be: a Class A or Class B felony, except a felony defined by IC 35-48-4; involuntary manslaughter as a Class C felony under IC 35-42-1-4; or reckless homicide as a Class C felony under IC 35-42-1-5, except for those cases in which the juvenile court has no jurisdiction under IC 31-6-2-1.1(d).

E. Presumptive Waiver arises under **IC 31-6-2-4(f)** when a child is charged with an act which would be a felony, and the child has previously been convicted of a felony or a non-traffic misdemeanor. [*"Once waived, always waived"*]

NOTE: The Juvenile Court has no jurisdiction according to IC 31-6-2-1.1(d) over the following situations an individual 16 years of age or older for an alleged violation of:

- (1) IC 35-42-1-1 (murder);
- (2) IC 35-42-3-2 (kidnapping)
- (3) IC 35-42-4-1 (rape);
- (4) IC 35-42-4-2 (criminal deviate conduct)
- (5) IC 35-42-5-1 (robbery), if:
 - (A) it was committed while armed with a deadly weapon; or
 - (B) it results in bodily injury or serious bodily injury;
- (6) IC 35-42-5-2 (carjacking);
- (7) IC 35-45-9-3 (criminal gang activity)
- (8) IC 35-45-9-4 (criminal gang intimidation)

- (9) IC 35-47-2-1 (carrying a handgun without a license)
- (10) IC 35-47-10 (children and firearms)
- (11) IC 35-47-5-4.1 (dealing in a sawed-off shotgun);
- (12) IC 35-48-4-1 (dealing in cocaine or a narcotic drug);
- (13) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance);
- (14) IC 35-48-4-3 (dealing in a schedule IV controlled substance); or
- (15) Any offense that may be joined [under IC 35-34-1-9 (a)(2)] with the crime listed in subdivisions (1) through (14).

The foregoing offenses are not subject to waiver. The age 16 requirement pertains to all crimes excluded from juvenile jurisdiction under IC 31-6-2-1(d) **Caldwell v. State**, 452 N.E.2d 278 (Ind. 1983).

II. CASE NOTES ON WAIVER

A. Jurisdiction

It is a prerequisite for waiver of juvenile jurisdiction that juvenile court acquire jurisdiction. **Taylor v. State**, 438 N.E.2d 275 (Ind. 1982); [**Seay v. State**, **Duty v. State**, **Murphy v. State**, etc. referred to in Scope Note D-2.01].

Investigation and hearing regarding waiver of juvenile court jurisdiction for child charged with act that would be murder if committed by adult is not a perfunctory proceeding, but rather is one intended to protect the full panoply of rights provided by State and Federal Constitutions. **Vance v. State**, 640 N.E.2d 51 (Ind. 1994).

Statutory presumption of waiver of juvenile jurisdiction with respect to *juveniles charged with murder* applies with respect to any charged felony which would be a lesser included offense of an indictment or information charging murder. **Trotter v. State**, 429 N.E.2d 637 (Ind. 1981).

A waiver hearing in juvenile court was not necessary when the juvenile charged with felony murder arising out of a burglary was convicted of burglary in adult court. **Douglas v. State**, 466 N.E.2d 421 (Ind. 1984).

The waiver hearing should be held within 20 working days of the filing of a delinquency petition. **Tacy v. State**, 452 N.E.2d 977 (Ind. 1983). *See also*: IC 31-6-7-6. However, if not so held, the juvenile is only entitled to release from detention, the juvenile court does not lose jurisdiction, and the juvenile is not entitled to discharge. **Spikes v. State**, 460 N.E.2d 957 (Ind. 1984).

The crime charged in a delinquency petition does not have to be charged with the degree of precision as required in a criminal case and the criminal court to which a waiver is granted may permit the information to be amended, without a new waiver. **Smith v. State**, 459 N.E.2d 355 (Ind. 1984).

If waiver is not granted, further proceedings must be held under Juvenile Code. **Partlow v. State**, 453 N.E.2d 259 (Ind. 1984).

Circuit Court, which failed to transfer cause as to theft count to its juvenile docket, never acquired juvenile jurisdiction over defendant and, thus, could not waive juvenile jurisdiction and obtain adult criminal jurisdiction over defendant, who was also charged with exempted counts dealing with operation of motor vehicles, so that subsequent adult criminal proceedings on theft count were null and void. **Kindred v. State**, 493 N.E.2d 467 (Ind. App., 1986).

Conspiracy was not included offense to burglary charge and where it was not considered by juvenile court nor waived by it, criminal court had no jurisdiction to try juvenile on that charge. **Harris v. State**, 398 N.E.2d 1346 (Ind. App., 1980).

Accessory liability can apply to statute providing for waiver of jurisdiction by juvenile court, even though statute does not specify accessories. **Tingle v. State**, 632 N.E.2d 345 (Ind. 1994).

Once jurisdiction properly vests in adult criminal court as to charged crime, whether by way of IC 31-5-7-4.1 [repealed; see, now, sections 31-6-4-1 and 31-6-4-2] or by way of juvenile court's waiver, jurisdiction remains in adult court as to that charge and all lesser included offenses. **Snodgrass v. State**, 406 N.E.2d 641, 273 Ind. 148 (Ind.1980).

Purpose of a hearing to waive juvenile jurisdiction is to assist the court in making findings concerning its jurisdiction, which does not depend on guilt or innocence of the offense charged. **Trotter v. State**, 429 N.E.2d 637 (Ind. 1981).

NOTE: Regarding discharge based on time delay/State's capacity to seek continuance, *See* IC 31-6-7-6.

B. Right to Counsel

Failure to appoint counsel to represent 17-year-old defendant prior to hearing on motion to waive jurisdiction of juvenile court **was error** regardless of who might ultimately pay for cost of appointment and was such as to make waiver unlawful and require reversal of conviction obtained in superior court subsequent to waiver. **Adams v. State**, (Ind. App., 1980), 411 N.E.2d 160.

A seventeen year old defendant was allowed meaningful consultation with his parent "in private for approximately twenty minutes," although the juvenile remained in an interrogation room three hours before his father arrived and his father advised him to cooperate with the police. **Harden v. State**, 576 N.E.2d 590 (Ind. 1991).

A seventeen year old juvenile made a confession and signed a waiver of rights form with his custodian, his grandmother. The Supreme Court indicated that since the grandmother was, "a person with whom the child resides," she was eligible to serve as his "custodian" for purposes of the juvenile waiver statute. **Tingle v. State**, 632 N.E.2d 345 (Ind.1994).

C. Burden of Proof

In "Presumptive Waiver" cases it has been held that the burden is upon the child to establish that "it would be in the best interests of the child and of the safety and welfare of the community for him to remain with the juvenile justice system."

In cases of waiver of jurisdiction by juvenile court, the state need only prove by a preponderance of evidence that prerequisites to waiver exist. **Jonaitis v. State**, 437 N.E.2d 140 (Ind. App., 1982); **Matter of Tacy**, 427 N.E.2d 919 (Ind. App., 1981).

"Probable cause" exists when the facts and circumstances within an officer's knowledge, which are based upon reasonably trustworthy information, are sufficient to warrant a reasonable man's belief that a crime has been or is being committed. This standard requires more than a mere suspicion, but does not require proof beyond a reasonable doubt. **Strosnider v. State**, 422 N.E.2d 1325 (Ind. App., 1981); **Trotter v. State**, 429 N.E.2d 637 (Ind. 1981).

The burden is on the state to prove the prerequisites to waiver by a preponderance of evidence. **Taylor v. State**, 438 N.E.2d 275 (Ind. 1982). **Matter of Tacy**, 427 N.E.2d 919 (Ind. App., 1981); **Jonaitis v. State**, 437 N.E.2d 140 (Ind. App., 1982).

D. Evidence

Admission of a juvenile confession made in another state is determined under Indiana confession rules, not the other state's rules. **Stidham v. State**, 608 N.E.2d 699 (Ind.1993).

A probable cause determination at an earlier phase of the case may be judicially noticed by the court on a waiver hearing,

particularly if the juvenile was represented by the same attorney at the earlier hearing, but the better practice is to introduce the evidence again at the waiver hearing. **Gerrick v. State**, 451 N.E.2d 327 (Ind. 1983).

The Court of Appeals has held that hearsay evidence may be considered in a waiver hearing. **Joanitis v. State**, 437 N.E.2d 140 (Ind. App., 1982). [But the Supreme Court has not decided the question. See: **Taylor v. State**, 438 N.E.2d 275 (Ind. 1982).]

E. Findings

If juvenile jurisdiction is waived, IC 31-6-2-4(j) requires that waiver order to include "**specific findings of fact to support the order.**"

The waiver order should *set forth specific findings of fact and not merely recite statutory language*. On appeal, the record of the waiver hearing may be used to supplement the reasons for waiver set forth in the waiver order. Support in reason and fact for waiver must appear in either the waiver order or the record of the waiver hearing. **Gerrick v. State**, 451 N.E.2d 327 (Ind. 1983); **Jonaitis v. State**, 437 N.E.2d 140 (Ind. App., 1982); **Matter of Tacy**, 427 N.E.2d 919 (Ind. App., 1981); **Strosnider v. State**, 422 N.E.2d 1325 (Ind. App., 1981).

"Refusal to grant waiver affirmed. . .the juvenile court is entitled to give whatever weight it deems appropriate to testimony concerning the best interest of the child and the community." **State v. Gorzelanny**, 468 N.E.2d 589 at 591 (Ind. App., 1984).

In a "presumptive waiver" case the record need only show probable cause to believe that the juvenile has committed the felony charged and that the juvenile was of the age required by the presumptive waiver statute at the time of the commission. **Trotter v. State**, 429 N.E.2d 637 (Ind. 1981); **Taylor v. State**, 438 N.E.2d 275 (Ind. 1982).

In "non-presumptive" cases the juvenile court must find that the case against the juvenile has prosecutive merit; that the child is beyond rehabilitation in the juvenile system; that the public welfare would be best served by waiving jurisdiction; and that the act is heinous or of aggravating character or is part of a repetitive pattern of acts. **Matter of Tacy**, 427 N.E.2d 919 (Ind. App., 1981).

It is error to dismiss a delinquency petition, following a denial of waiver, without a fact-finding hearing. **State v. Gorzelanny**, 468 N.E.2d 589 (Ind. App., 1984).

A fourteen year old juvenile was properly waived and sentenced in a murder and felony-murder case, when the waiver order merely contained a stamped, rather than a handwritten judge's signature with the court staff's initials underneath the signature imprint. The record indicates that a court made a decision based on the evidence that the juvenile should be waived and tried on murder and felony-murder. **Thomas v. State**, 562 N.E.2d 43 (Ind. App., 1990).

Note: The Benchbook Committee discourages the use of signature stamps!

According to Ind. Code 31-6-9-2, the juvenile judge may delegate the responsibilities of submitting findings and recommendations to the juvenile referee. In this case, "the juvenile referee presided over the waiver hearing and adopted proposed findings of fact which the juvenile judge subsequently adopted . . ." Id. at 46. **Thomas v. State**, 562 N.E.2d 43 (Ind. App., 1990).

For [Nonpresumptive] waiver of jurisdiction, juvenile court must find that case against juvenile has prosecutive merit, that child is beyond rehabilitation in juvenile system, that public welfare would be best served by waiving jurisdiction, and that act is heinous or of aggravated character or is part of repetitive pattern of acts. **Matter of Tacy**, 427 N.E.2d 919 (Ind. App., 1981).

Due process requires statement of reasons, including relevant facts, underlying waiver from juvenile jurisdiction and such

statement must not merely recite statutory language. **Daniel v. State**, 582 N.E.2d 364 (Ind.1991), *rehearing denied, certiorari denied* 113 S.Ct. 116, 506 U.S. 838, 121 L.Ed.2d 72.

It is not necessary for court to recount all possible alternative juvenile dispositions available to it before concluding none are appropriate and waiving minor from juvenile to criminal court. **Strosnider v. State**, 422 N.E.2d 1325 (Ind. App., 1981).

Juvenile court is entitled to give whatever weight it deems appropriate to testimony concerning best interests of child and community, and in view of testimony from two clinical psychologists, juvenile court probation and intake officer and social worker with prisoner outreach program, juvenile court did not abuse discretion in finding that juvenile was not danger to community and that community's interests were best served with him in the juvenile court as opposed to State's waiver petition. **State v. Gorzelanny**, 468 N.E.2d 589 (Ind. App., 1984).

The waiver hearing cannot involve any adjudication or findings of delinquency, else waiver will result in double jeopardy; however, the finding must include a finding of probable cause. **Walker v. State**, 349 N.E.2d 161 (Ind. 1976) cert. den. 429 U.S. 943, 97 S. Ct. 363, 50 L. Ed. 2d 313; **Murphy v. State**, 364 N.E.2d 779 (Ind. 1977); **Taylor v. State**, 438 N.E.2d 275 (Ind. 1982); **State v. Gorzelanny**, 468 N.E.2d 589 (Ind. App., 1984).

NOTE: For findings required under *prior waiver statute* see: **Summer v. State**, 230 N.E.2d 320 (Ind. 1967); **Atkins v. State**, 290 N.E.2d 441 (Ind. 1972); **State v. Jump**, 309 N.E.2d 148 (Ind. App., 1974); **Clemons v. State**, 317 N.E.2d 859 (Ind. App., 1974); **Imel v. State**, 342 N.E.2d 897 (Ind. App., 1974); **Seay v. State**, 337 N.E.2d 489 (Ind. App., 1975), Rehearing 340 N.E.2d 369 (Ind. App., 1975); **Cartwright v. State**, 344 N.E.2d 83 (Ind. App., 1976); and **Gregory v. State**, 386 N.E.2d 675 (Ind. 1979).

F. Review

Supreme Court reviews juvenile court's decision to waive jurisdiction only for abuse of discretion. **Vance v. State**, 640 N.E.2d 51 (Ind.1994).

Record and order waiving juvenile to adult criminal court must allow meaningful review which is not based on assumptions about state of mind of judge. **Thomas v. State**, 562 N.E.2d 43 (Ind. App., 1990).

PROCEDURE
Waiver Of Juvenile Jurisdiction

1. After formal juvenile jurisdiction is obtained, the prosecuting attorney may petition the court for waiver of juvenile jurisdiction. Therefore, the court should set the hearing on the petition for waiver.

USE FORM D-7.03 for any "Non-Presumptive Waiver".

USE FORM D-7.05 for Non-Presumptive Waiver on "Controlled Substances Felony".

[Note: if violation is a Class A or B Felony, Presumptive Waiver may be sought, and Form D-7.09 used instead.]

USE FORM D-7.07 for "Presumptive Waiver - Murder".

USE FORM D-7.09 for "Presumptive Waiver - Class A or B felony, or following Class C felonies: Involuntary Manslaughter, IC 35-42-1-4, or Reckless Homicide, IC 35-42-1-5".

USE FORM D-7.11 for Waiver of "Child Previously Convicted of Felony or Nontraffic Misdemeanor, IC 31-6-2-4(f)".

2. The juvenile must be advised of his rights and an attorney should be appointed the same as in an initial hearing. See Delinquency §6 of this Benchbook.
3. The hearing on a waiver petition should be treated as a probable cause hearing wherein the court must make specific findings of fact as required in IC 31-6-2-4(j). Since no motion to waive juvenile jurisdiction may be made or granted after the child has admitted the allegations in the petition at the initial hearing, the Benchbook Committee recommends that no admission by the juvenile at the initial hearing should be solicited or accepted until the court has first determined the prosecutor's intention as to waiver pursuant to IC 31-6-4-13(d).
4. Findings and an order must be entered based on guidelines set forth in the code and applicable cases.

USE FORM D-7.04 for "Non-Presumptive Waiver".

USE FORM D-7.06 or Non-Presumptive Waiver for "Controlled Substances Felony".

USE FORM D-7.08 for "Presumptive Waiver - Murder".

USE FORM D-7.10 for Presumptive Waiver - Class A or B felony, or following Class C felonies: Involuntary Manslaughter, IC 35-42-1-4, or Reckless Homicide, IC 35-42-1-5.

USE FORM D-7.12 for "Presumptive Waiver - Child Previously Convicted of Felony or Nontraffic Misdemeanor, IC 31-6-2-4(f)."

5. If waiver of juvenile jurisdiction is not granted: USE FORM D-7.13 - "Order Denying Waiver."

STATE OF INDIANA
COURT

In The Matter Of _____

_____ Case No. _____
A Child Alleged to be a Delinquent Child

PROSECUTOR'S MOTION FOR WAIVER OF JUVENILE JURISDICTION
[(IC 31-6-2-4(b))]

The State of Indiana, by the undersigned Deputy/Prosecuting Attorney, hereby alleges and represents to the Court as follows:

(1) That said child, _____, was born _____ and was fourteen (14) years of age or older, and under eighteen (18) years of age, at the time of the charged offense.

(2) That said child is subject to the jurisdiction of the Juvenile Court herein by virtue of a Petition Alleging Delinquency having been filed on _____.

(3) That the act charged would be an offense if committed by an adult, to-wit:

(4) That said offense charged is:

() heinous or of an aggravated character [state why]: _____

() part of a repetitive pattern of offenses (even though less serious in nature) in that child has heretofore been arrested and/or adjudicated for:

_____.

(5) that there is probable cause to believe that said child committed the offense charged herein, that said child is beyond rehabilitation under the juvenile justice system, it is the best interest of the safety and welfare of the community that child be required to stand trial as an adult, and that waiver of juvenile jurisdiction is sought under the provisions of IC 31-6-2-4(b).

WHEREFORE, your petitioner requests that a hearing be set by the Court to determine whether juvenile jurisdiction should be waived herein, that after said hearing that the Court waive juvenile jurisdiction over the offense charged herein to the _____ Court of _____ County, a Court that would have jurisdiction over the offense if that act were committed by an adult, and said waiver to be for the offense charged, and any lesser included offense.

Dated: _____

Deputy /Prosecuting Attorney for the _____ Judicial
Circuit of Indiana

STATE OF INDIANA
COURT

In The Matter Of _____

A Child Alleged to be a Delinquent Child

Case No. _____

WAIVER ORDER
[IC 31-6-2-4(b)]

The State of Indiana appears by _____ Deputy/Prosecuting attorney. The child, _____, and child's parent(s), _____, appear in person and by _____, attorney. Also, (Intake Officer) _____, appears.

The Court having heard and considered the Prosecutor's motion for waiver of juvenile jurisdiction under the provisions of IC 31-6-2-4(b), and the Court being duly advised in the premises, the Court now makes the following findings of fact:

(1) That said child, was fourteen (14) years of age or older, and under eighteen (18) years of age, at the time of the charged offense.

(2) Said child is subject to the jurisdiction of the Juvenile Court by virtue of a Petition Alleging Delinquency having been filed on _____.

(3) The act charged would be an offense if committed by an adult, to wit:

(4) That said offense charged is:

() heinous or of an aggravated character: *[Enter specific findings here:]*

() part of a repetitive pattern of offenses (even though less serious in nature) in that child has heretofore been arrested and/or adjudicated for: *[Enter specific findings here:]*

(5) That there is probable cause to believe that said child committed said offense.

(6) That said child is beyond rehabilitation under the juvenile justice system in that the child has heretofore had available to him and/or made use of the following rehabilitative programs: *[Enter specific findings here:]*

and that it is in the best interests of the safety and welfare of the community that he stand trial as an adult.

It is therefore adjudged and ordered that juvenile jurisdiction over this case be and the same hereby is waived to the _____ Court of _____ County, a Court that would have jurisdiction over the act charged therein if the act were committed by an adult, and said waiver being granted for the offense charged and any lesser offense included therein.

It is further ordered and adjudged that:

- () Recognizance bond for said child to answer in said Court is hereby fixed in the sum of \$_____, and said child is remanded to the custody of the Sheriff of _____ County, Indiana, unless sooner released upon such recognizance bond or in an amount as may be hereinafter set by order of the Court to which said child is waived.
- () That said child be released upon the recognizance of said child and child's parents, guardian, or custodian to produce said child in said Court to which jurisdiction is waived.

Dated: _____

Judge _____

STATE OF INDIANA

COURT

In The Matter Of _____

A Child Alleged to be a Delinquent Child

Case No. _____

**PROSECUTOR'S MOTION FOR WAIVER OF JUVENILE JURISDICTION
ON CONTROLLED SUBSTANCES FELONY
[IC 31-6-2-4(c)]**

The State of Indiana, by the undersigned Deputy/Prosecuting Attorney, hereby alleges and represents to the Court as follows:

(1) That said child, _____, was born _____ and was sixteen (16) years of age or older, and under eighteen (18) years of age, at the time of commission of the alleged offense.

(2) That said child is subject to the jurisdiction of the Juvenile Court herein by virtue of a Petition Alleging Delinquency filed on _____.

(3) That the act charged would be a felony under IC 35-48-4 if committed by an adult.

(4) That there is probable cause to believe that said child committed the offense charged herein, and that it is in the best interests of the safety and the welfare of the community for the child to stand trial as an adult, and that waiver of juvenile jurisdiction is sought under the provisions of IC 31-6-2-4(c).

WHEREFORE, your petitioner requests that a hearing be set by the Court to determine whether juvenile jurisdiction should be waived herein, and that after said hearing that the Court waive juvenile jurisdiction over the offense charged herein to the _____ Court of _____ County, a Court that would have jurisdiction over the offense if that at were committed by an adult, and said waiver to be for the offense charged and any lesser included offense.

Dated: _____

Deputy/Prosecuting Attorney for the _____

Judicial Circuit of Indiana

STATE OF INDIANA

COURT

In The Matter of _____

A Child Alleged to be a Delinquent Child

Case No. _____

**WAIVER ORDER
[IC 31-6-2-4(c)]**

The State of Indiana appears by _____, Deputy/Prosecuting Attorney. The child, _____, and child's parent(s), _____, appear in person and by _____, attorney. Also, (Intake Officer), _____, appears.

The Court having heard and considered the Prosecutor's motion for waiver of juvenile jurisdiction under the provisions of IC 31-6-2-4(c), and the Court being duly advised in the premises, the Court now makes the following findings of fact:

(1) That said child, was sixteen (16) years of age or older, and under eighteen (18) years of age, at the time of commission of the charged offense.

(2) Said child is subject to the jurisdiction of the Juvenile Court by virtue of a Petition Alleging Delinquency filed on _____.

(3) That the act charged would be a felony under IC 35-48-4 if committed by an adult, to-wit: [*State the felony*]

(4) That there is probable cause to believe that said child committed the offense charged herein, and that it is in the best interests of the safety and the welfare of the community for the child to stand trial as an adult, to-wit: [*Enter findings in support of this conclusion here:*]

It is therefore adjudged and ordered that juvenile jurisdiction over this cause be and the and same hereby is waived to the _____ Court of _____ County, a Court that would have jurisdiction over the act charged therein if the act were committed by an adult, and said waiver being granted for the offense charged and any lesser offense included therein.

It is further ordered and adjudged that:

() Recognizance bond for said child to answer in said Court is hereby fixed in the sum of \$ _____, and said child is remanded to the custody of the Sheriff of _____ County, Indiana, unless sooner released upon such recognizance bond or in an amount as may be hereinafter set by order of the Court to which said child is waived.

() That said child be released upon the recognizance of said child and child's parent(s), guardian, or custodian to produce said child in said Court to which jurisdiction is waived.

Dated: _____

Judge

STATE OF INDIANA

COURT

In The Matter of _____

A Child Alleged to be a Delinquent Child

Case No. _____

PROSECUTOR'S MOTION FOR WAIVER OF JUVENILE JURISDICTION
[IC 31-6-2-4(d)]

The State of Indiana by the undersigned Deputy/Prosecuting Attorney, hereby alleges and represents to the Court as follows:

(1) That said child, _____, was born _____ and was ten (10) years of age or older and under sixteen (16) years of age, at the time of the charged offense.

(2) That said child is subject to the jurisdiction of the Juvenile Court herein by virtue of a Petition Alleging Delinquency having been filed on _____.

(3) That the said child is charged with an act that would be Murder if committed by an adult.

(4) There is probable cause to believe said child has committed said act.

WHEREFORE, your petitioner requests that a hearing be set by the Court to determine whether juvenile jurisdiction should be waived herein, and that after said hearing that the Court waive juvenile jurisdiction over the offense charged herein to the _____ Court of _____ County, a Court that would have jurisdiction over the offense charged if the act were committed by an adult, and said waiver to be for the offense charged and any lesser included offense.

Dated: _____

Deputy/Prosecuting Attorney for the _____
_____ Judicial Circuit of Indiana

D-7.08

STATE OF INDIANA

COURT

In The Matter Of _____

A Child Alleged to be a Delinquent Child

Case No. _____

WAIVER ORDER
[IC 31-6-2-4(d)]

The State of Indiana appears by _____, Deputy/Prosecuting Attorney. The child, _____, and child's parent(s), _____, appear in person and by _____, attorney. Also, (Intake Officer) _____ appears.

The Court having heard and considered the Prosecutor's motion of waiver of juvenile jurisdiction under the provisions of IC 31-6-2-4(d), and the Court being duly advised in the premises, the Court now makes the following findings of fact:

(1) That said child was ten (10) years of age or older, and under sixteen (16) years of age at the time of the charged offense.

(2) Said child is subject to the jurisdiction of the Juvenile Court by virtue of a Petition Alleging Delinquency filed on _____.

(3) That said child is charged herein with an act that would be Murder if committed by an adult.

(4) That there is probable cause to believe that said child committed said offense.

(5) The Court has not found from the evidence that it would be in the best interest of the child and the safety and welfare of the community for him to remain within the juvenile justice system.

It is therefore adjudged and ordered that juvenile jurisdiction over this case be and the same hereby is, waived to the _____ Court of _____ County, a Court that would have jurisdiction over the act charged herein if the act were committed by an adult and said waiver being granted for the offense of murder as charged herein and any lesser included offense.

It is further ordered and adjudged that said child is remanded to the custody of the Sheriff of _____ County, Indiana to be held under this order, **without bail or recognizance**, unless sooner released under such recognizance bond or in an amount as may be hereinafter set by order of the Court to which said child is waived.

Dated: _____

Judge _____

STATE OF INDIANA

____ COURT

In The Matter Of _____

_____ Case No. _____
 A Child Alleged to be a Delinquent Child

PROSECUTOR'S MOTION FOR WAIVER OF JUVENILE JURISDICTION
 [IC 31-6-2-4(e)]

The State of Indiana, by the undersigned Deputy/Prosecuting Attorney, hereby alleges and represents to the Court as follows:

(1) That said child, _____, was born _____ and was sixteen (16) years of age or older, and under eighteen (18) years of age, at the time of commission of the alleged offense.

(2) That said child is subject to the jurisdiction of the Juvenile Court herein by virtue of a Petition Alleging Delinquency filed on _____.

(3) That the offense charged is _____:

() a Class A felony, except a felony defined by IC 35-38-4.

() a Class B felony, except a felony defined by IC 35-38-4.

() Involuntary manslaughter (IC 35-42-1-4) or reckless homicide (IC 35-42-1-5) charged as a Class C felony. *(Strike inapplicable citation)*

(4) That there is probable cause to believe that said child committed said act.

WHEREFORE, your petitioner requests that a hearing be set by the Court to determine whether juvenile jurisdiction should be waived herein, and that after said hearing that the Court waive juvenile jurisdiction over the offense charged herein to the _____ Court of _____ County, a Court that would have jurisdiction over the offense if that act were committed by an adult, and said waiver be for the offense charged and any lesser included offense.

Dated: _____

 Deputy/Prosecuting Attorney for the _____
 Judicial Circuit of Indiana

STATE OF INDIANA
_____ COURT

In The Matter Of _____

_____ Case No. _____

A Child Alleged to be a Delinquent Child

WAIVER ORDER
[IC 31-6-2-4(e)]

The State of Indiana appears by _____, Deputy/Prosecuting Attorney. The child, _____, and child's parent(s), _____, appear in person and by _____, attorney. Also (Intake Officer) _____, appears.

The Court having heard and considered the Prosecutor's motion for waiver of juvenile jurisdiction under the provisions of IC 31-6-2-4(e), and the Court being duly advised in the premises, the Court now makes the following findings of fact:

(1) That said child was sixteen (16) years of age or older, and under eighteen (18) years of age, at the time of the charged offense.

(2) Said child is subject to the jurisdiction of the Juvenile Court by virtue of Petition Alleging Delinquency filed on _____.

(3) That the offense charged is _____:
☐ a Class A felony, except a felony defined by IC 35-38-4.
☐ a Class B felony, except a felony defined by IC 35-38-4.
☐ Involuntary manslaughter (IC 35-42-1-4) or reckless homicide (IC 35-42-1-5) charged as a Class C felony. (*Strike inapplicable citation*)

(4) That there is probable cause to believe that said child committed said offense.

(5) The Court has not found from the evidence that it would be in the best interest of the child and the safety and welfare of the community for him to remain within the juvenile justice system.

It is therefore adjudged and ordered that juvenile jurisdiction over this case be and the same hereby is, waived to the _____ Court of _____ County, a Court that would have jurisdiction over the act charged if the act were committed by an adult, said waiver being granted for the offense charged and any lesser offense included therein.

It is further ordered and adjudged that:

☐ Recognizance bond for said child to answer to said Court is hereby fixed in the sum of \$ _____, and said child is remanded to the custody of the Sheriff of _____ County, Indiana, unless sooner released under such recognizance bond or in an amount as may be hereinafter set by order of the Court to which said child is waived.

☐ That said child be released upon the recognizance of said child and child's parent(s), guardian or custodian to

produce said child in said Court to which jurisdiction is waived.

Dated: _____

Judge

STATE OF INDIANA

____ COURT

In The Matter Of _____

____ Case No. _____

A Child Alleged to be a Delinquent Child

**PROSECUTOR'S MOTION FOR PRESUMPTIVE WAIVER OF JUVENILE JURISDICTION OVER
CHILD PREVIOUSLY CONVICTED OF FELONY
OR NON-TRAFFIC MISDEMEANOR**
[IC 31-6-2-4(f)]

The State of Indiana, by the undersigned Deputy/Prosecuting Attorney, hereby alleges and represents to the Court as follows:

(1) That said child, _____, was born _____ and was under eighteen (18) years of age at the time of commission of the alleged offense.

(2) That said child is subject to the jurisdiction of the Juvenile Court herein by virtue of a Petition Alleging Delinquency filed on _____.

(3) That the act charged would be a felony if committed by an adult.

(4) That there is probable cause to believe said child committed said act.

(5) That on the _____ day of _____, 19____, in the _____ Court in the State of _____, said child was previously convicted of a felony or non-traffic misdemeanor, to-wit: [*State the felony or non-traffic misdemeanor and Class Felony/Misdemeanor here:*]

WHEREFORE, your petitioner requests that a hearing be set by the Court to determine whether juvenile jurisdiction should be waived herein, and that after said hearing that the Court waive juvenile jurisdiction over the offense charged herein to the _____ Court of _____ County, a Court that would have jurisdiction over the offense if that act were committed by an adult, and said waiver to be for the offense charged and any lesser included offense.

Dated: _____

Deputy/Prosecuting Attorney for the _____
Judicial Circuit of Indiana

STATE OF INDIANA
_____ COURT

In The Matter Of _____

_____ Case No. _____

A Child Alleged to be a Delinquent Child

WAIVER ORDER

[31-6-2-4(f)]

The State of Indiana appears by _____, Deputy/Prosecuting Attorney. The child, _____, and child's parent(s) _____ appear in person and by _____, attorney. Also, (Intake Officer), _____, appears.

The Court having heard and considered the Prosecutor's motion for waiver of juvenile jurisdiction under the provisions of IC 31-6-2-4(f), and the Court being duly advised in the premises, the Court now makes the following findings of fact:

(1) That said child, _____, was born _____ and was under eighteen (18) years of age at the time of commission of the alleged offense.

(2) Said child is subject to the jurisdiction of the Juvenile Court by virtue of a Petition Alleging Delinquency filed on _____.

(3) That the act charged would be a felony if committed by an adult.

(4) That there is probable cause to believe that said child committed said act.

(5) That on the ____ day of _____, 19____, in the _____ Court in the State of _____, said child was previously convicted of a felony or non-traffic misdemeanor, to wit: [*State the felony or non-traffic misdemeanor and Class Felony/Misdemeanor here:*]

It is therefore adjudged and ordered that juvenile jurisdiction over this cause be and the same hereby is waived to the _____ Court of _____ County, a Court that would have jurisdiction over the act charged therein if the act were committed by an adult, and said waiver being granted for the offense charged and any lesser offense included therein.

It is further ordered and adjudged that:

() Recognizance bond for said child to answer in said Court is hereby fixed in the sum of \$_____, and said child is remanded to the custody of the Sheriff of _____ County, Indiana, unless sooner released upon such recognizance bond or in an amount as may be hereinafter set by order of the Court to which said child is waived.

() That said child be released upon the recognizance of said child and child's parent(s), guardian, or custodian to produce said child in said Court to which jurisdiction is waived.

Dated: _____

Judge

STATE OF INDIANA

____ COURT

In The Matter Of _____

_____ Case No. _____

A Child Alleged to be a Delinquent Child

ORDER DENYING WAIVER

The State of Indiana appears by _____, Deputy/Prosecuting Attorney. The juvenile, _____, parent(s) _____, attorney. Also, (Intake Officer) _____, appears.

The Court having heard and considered the Prosecutor's motion for waiver of juvenile jurisdiction and being duly advised in the premises, now denies the petition for waiver.

Case set for Fact-finding Hearing on the _____ day of _____, 19____, at _____ M. and notice ordered.

Dated: _____

Judge

Code Conversion Table

[illegible]

SCOPE NOTE

Two sample dialogues are presented:

1. Detention hearing:

USE FORM D-8.02

2. Initial hearings:

USE FORM D-8.03

DIALOGUE FOR DETENTION HEARING
(DELINQUENCY)

COURT: Let the records show that this is a detention hearing being held this ____ day of _____, 19____. at _____ o'clock ____M.

1. COURT: Will the juvenile please state his/her full name, age and date of birth?

2. COURT: In regard to the detention of _____,
(name of juvenile)
a juvenile, present are _____.
(official persons)

Also present are:

3. COURT: Would the parents, guardians or custodians of the juvenile who are present please state their names and relationship to the juvenile.

A:

4. COURT: Mr./Mrs. _____, did your juvenile give his correct name, age and date of birth?

A:

5. COURT: Mr./Mrs. _____, what is your address and how long have you lived there?

A:

6. COURT: Mr./Mrs. _____, does the juvenile live there with you at this time? (If not, where does the juvenile live and with whom?)

A:

7. COURT: Will all others present identify yourself by name and reason for being here and/or relationship to the juvenile.

A:

8. COURT: _____, when was the juvenile taken into custody?
(official person)

A:

9. COURT: Let the record reflect this hearing is being timely held [See IC 31-6-4-5(f)]. We are here today to determine several things. First, if probable cause has not already been found, we must determine whether there is probable cause to believe that the juvenile is a delinquent juvenile; a delinquent juvenile is a person who, while less than eighteen (18) years of age, committed an act that would be an offense if committed by an adult or ran away, was truant, violated curfew, is incorrigible or a status offense and needs care, treatment or rehabilitation that he is not receiving and is unlikely to receive without the coercive intervention of the court. Second, we are here to determine whether the juvenile should be released from detention. To continue the juvenile detention, I must find that the juvenile is unlikely to appear for subsequent proceedings, detention is essential to protect the juvenile or the community, no person legally entitled to the custody of the juvenile can be found who will take the juvenile or the juvenile has a reasonable basis for requesting that he not be released. Third, if I determine that the juvenile should be continued in detention, I must then determine whether that detention should be a juvenile detention facility or a non-secure facility.

Do you _____ understand why we are here?
(name of juvenile)

A:

10. COURT: Mr./Mrs. _____, do you understand why we are here?
A:

NOTE: If any attorney present, skip paragraphs 11, 13, 14, 15, 16, 17, 18 and 19.

11. COURT: _____, you have a right at this hearing to be
(name of juvenile)

represented by an attorney who is able to do so without any conflict of interest. That may either be an attorney of your choice or an attorney appointed by the court. You are entitled to a court-appointed attorney without any cost to you and regardless of whether you or your parents can afford an attorney. If the court does give you a court-appointed attorney, at the time of disposition the court must make a decision whether you must reimburse the county for all or part of the cost of the court-appointed attorney. Do you understand this right?

A:

12. COURT: _____, you also have a right not to testify against
(name of juvenile)
yourself at this hearing. Do you understand that right?

A:

13. COURT: _____, you have the right to remain silent, and anything
you say may be used against you in subsequent judicial proceedings. Do you understand that right?

A:

14. COURT: The law (IC 31-6-7-3) also states that a juvenile cannot waive his right to an attorney and that any waiver must be by the juvenile's custodial parent, guardian or custodian, or a guardian ad litem. The juvenile's custodial parent, guardian, custodian or guardian ad litem may waive the juvenile's right to an attorney if they knowingly and voluntarily waive the right, have no interest adverse to the juvenile, meaningful consultation has occurred between them and the juvenile, and if the juvenile knowingly and voluntarily joins with the waiver. Now, Mr./Mrs. _____, do you have any interest in these proceedings adverse to the juvenile's best interest?

A:

15. COURT: _____, you have a right to have meaningful
(name of juvenile)
consultation with your parents. Do you understand this right?

A:

16. COURT: Now, I want you to take time to talk to your parents and decide whether or not
you want an attorney at this hearing and whether you want the court to appoint an attorney for you for this hearing.
(Pause.) Have you had a chance to talk with your parents?

A:

17. COURT: _____, do you want an attorney here for this hearing?
(name of juvenile)

A:

18. COURT: Do you want the court to appoint an attorney?
A:

19. COURT: _____, do want an attorney here for this hearing?
(name of parents)
A:

NOTE: If the response to paragraph 16 or 17 above is yes, the following dialogue is suggested.

20. COURT: All right, the hearing is now continued to the ____ day of _____,
19____, at _____ o'clock ____M. and the juvenile is remanded to the custody of
_____ a juvenile detention facility/non-secure facility, pending such hearing and the
court now appoints _____ as counsel for juvenile and
_____ is to forthwith notify said counsel per (official person)
order entered pursuant to D-6.02. Hearing continued.

(Hearing resumes.)

21. COURT: _____, (If court has not already determined probable
(official person)
cause) please inform the court of your probable cause to believe that the juvenile is a delinquent juvenile.
A:
22. COURT: _____, what prior contact has the juvenile had with the
(official person)
juvenile justice system and what were the dispositions of those contacts?
A:
23. COURT: _____, what are your recommendations to the court
(official person)
concerning whether the juvenile should be released or detained, the type of detention, if he is to be detained, and any
other orders that the court should make at this time?
A:
24. COURT: Mr./Mrs. _____, what suggestions can you give the court
concerning detention at this time?
25. COURT: _____, do you wish to say anything
(name of attorney or juvenile)
at this time concerning only the issue of detention?
26. COURT: Finding and order entered. See form D-1.08.

NOTE: Some courts advise the juvenile at this time that they may petition the court for an additional detention hearing. Many courts do not.

**DIALOGUE FOR INITIAL HEARING ON JUVENILE PETITION
DELINQUENCY**

1. COURT: Let the record show that this is an initial hearing in Case No. _____, entitled "In The Matter Of _____, a child alleged to be a delinquent child," held this _____ day of _____ pursuant to IC 31-6-4-13. Present are _____.

(names, identities and official positions of all persons known.)

2. COURT: Will the juvenile please state his full name, age and date of birth?

A:

3. COURT: Would the parents, guardians or custodians of the juvenile who are present please state their names and relationship to the juvenile?

A:

4. COURT: Mr./Mrs. _____, did your juvenile give his correct name, age and date of birth?

A:

5. COURT: Mr./Mrs. _____, what is your address and how long have you lived there?

A:

6. COURT: Mr./Mrs. _____, does the juvenile live there with you at this time? (If not, where does he live and with whom?)

A:

7. COURT: Upon motion of _____, this court has authorized, and there has been filed, a petition alleging that _____ (name of juvenile) is a delinquent juvenile. _____, have you received a copy of the formal delinquency petition?

A:

NOTE: If they have not seen the delinquency petition, deliver a copy to them at this time and allow them an opportunity to review the petition.

8. COURT: _____, have you now had an opportunity to review this
(juvenile/parent)
petition?

A:

9. COURT: This petition alleges that _____, (name of juvenile) on or about the _____ day of _____, 19____, committed an act of delinquency in that he _____ (nature of the act charged)

Do you understand this?

A:

NOTE: If an attorney is present, delete paragraphs numbered 10, 11, 12, 13, 14, 15, 16 and 17.

10. COURT: In this proceeding, the juvenile is entitled to be represented by counsel who may represent him without

a conflict of interest. It is the duty of the court to appoint an attorney for him, without any cost to him, if he desires one. If the court does give you a court appointed attorney, at the time of disposition the court must make a decision whether you must reimburse the county for all or part of the cost of the court-appointed attorney. Do you understand this right?

A:

11. COURT: The law (IC 31-6-7-3) also states that a juvenile can waive his right to an attorney if that waiver is joined by the juvenile's custodial parent, guardian, custodian or guardian ad litem. The juvenile's parent, guardian, custodian, or guardian ad litem may waive the juvenile's right to an attorney if they knowingly and voluntarily waive the right, and if they have no interest adverse to the juvenile, and if meaningful consultation has occurred between them and the juvenile, and if the juvenile knowingly and voluntarily joins with the waiver. Now, Mr./Mrs. _____, do you have any interest in these proceedings adverse to the juvenile's best interests?

A:

12. COURT: _____, you have a right to have meaningful consultation with your parents. Do you understand this right?

A:

13. COURT: Now, I want you to take time to talk to your parents and decide whether or not you want an attorney at this hearing and whether you want the court to appoint an attorney for you for this hearing. (Pause) Have you had a chance to talk with your parents?

14. COURT: _____, do you want an attorney here for this hearing?
(name of juvenile)

A:

15. COURT: _____, do you want the court to appoint an attorney?
(name of juvenile)

A:

16. COURT: _____, do you want the court to appoint an attorney?
(name of parents)

A:

NOTE: If the answer to paragraphs 14, 15, or 16 is yes, then the hearing should be continued pursuant to the following dialogue.

17. COURT: All right, the hearing is now continued to the _____ day of _____, 19 ____, at _____ o'clock ____M. (no more than sixty (60) days excluding Saturdays, Sundays and legal holidays) which hearing shall be a fact-finding hearing and the court now appoints _____ as counsel for juvenile and _____ is to

(official person)

forthwith notify counsel of said hearing date. See Form D-6.02. Hearing continued.

(Hearing resumes.)

18. COURT: _____, in these proceedings, the juvenile has the following
(juvenile/parent)

rights: to know the nature of the allegations against the juvenile; to be represented by counsel; to have a speedy trial;

to confront all witnesses against him; to cross-examine witnesses against him; to obtain witnesses or tangible evidence by compulsory process; to introduce evidence on his own behalf; to refrain from testifying against himself; the right to remain silent; and to have the State prove that he committed the delinquent act charged beyond a reasonable doubt.

_____ do you understand these rights?

(name of juvenile)

A:

19. COURT: _____, do you understand these rights of your juvenile?
(parent)

A:

20. COURT: _____, do you intend to seek a waiver in this court?
(official person)

A:

NOTE: If the answer to paragraph 20 is "no", go on to paragraph 21. If the answer is "yes", a fact-finding hearing on the waiver petition must be set within 20 working days of the date of the filing of the delinquency petition or 60 days if the juvenile is not in detention.

21. COURT: _____, I have informed your juvenile and you of your juvenile's rights in the proceedings. I must now inform you that if your juvenile is adjudicated a delinquent juvenile, you or the custodian of the juvenile may be required to participate in a program of care, treatment, or rehabilitation for the juvenile, and you may be held financially responsible for any services provided for the juvenile or yourselves. You are entitled to controvert any allegations made at the dispositional or other hearing concerning your participation, or you may controvert any allegations concerning your financial responsibility for any services that would be provided. Do you understand this?

A:

22. COURT: _____, you are charged with the following act
(juvenile)
of delinquency: _____
(here read the charge)

NOTE: USE THIS SECTION ONLY IF THE JUVENILE HAS COMMITTED AN ACT, WHICH, IF COMMITTED BY AN ADULT, WOULD CONSTITUTE A CRIME.

a. I could award wardship over you to the Indiana Department of Correction for housing in any correctional facility for juveniles or in a community based correctional facility for juveniles.

[**IF APPLICABLE:** until age 18 if the child is at least 13 and less than 16 and commits murder, kidnaping, rape, criminal deviate conduct, robbery committed with a deadly weapon or resulting in bodily or serious bodily injury.]

[**IF APPLICABLE:** for not more than 2 years if: (a) the act committed was a felony against a person, or a Class A or B felony that is a controlled substance offense, or Burglary as a Class A or B felony; and (b) if the child is at least 14 years of age and the child has committed two, unrelated, prior adjudicated acts of delinquency that would be felonies if committed by an adult

b. (1 - applicable only if juvenile is less than 17 years old). I could place you in a juvenile detention facility for up to ninety (90) days.

NOTE: If the delinquent act would be a Class C misdemeanor if committed by an adult, then 60 days.

(2 - applicable if the juvenile is at least 17 years old). I could place you in a juvenile detention facility for up to one hundred twenty days (120) days.

NOTE: If the delinquent act would be a Class C misdemeanor if committed by an adult, then sixty (60) days.

- c. I could remove you from your home and place you in another home or shelter care facility.
- d. I could award wardship over you to any other person or shelter care facility.
- e. I could place you in a secure private facility for children licensed under the laws of this state.
- f. I could order a person who is a respondent in a protective proceeding of this chapter to refrain from direct or indirect contact with you.
- g. I could be required to order HIV testing if you are convicted of certain sex and/or controlled substance offenses.

In addition to any one of the dispositions I have mentioned, I could also enter an order for:

- a. Supervision over you by the probation department (or the county office of family and children).
- b. For you to receive out-patient treatment at a social service agency, psychological, psychiatric, medical or educational facility, or from an individual practitioner.
- c. For you to surrender your driver's license to the Court for a specified period of time.
- d. I could order you pay restitution to the crime victim if the victim provides reasonable evidence of loss which you could question at the dispositional hearing.
- e. I could partially or completely emancipate you.
- f. I could order you to attend an alcohol or drug service program.
- g. I could order you to perform community service for a specified period of time.

In addition, the Court could order you to pay an initial probation user's fees of not less than \$25.00 or more than \$100.00 and a monthly probation user's fee of not less than \$5.00 or more than \$15.00. Also, the Court could assess court costs against you or your parents in the sum of \$120.00, if you are not indigent. (See IC 33-19-5-3).

NOTE: USE THE FOLLOWING IF THE JUVENILE IS A REPEAT TRUANT:

I will order the invalidation of your driver's license of permit by the bureau of motor vehicles for not less than 90 or more than 180 days if you are a repeat truant,

NOTE: USE THE FOLLOWING IF THE JUVENILE IS A CRIME DELINQUENT:

I will order the invalidation of your driver's license or permit or your learner's permit not be issued by the bureau of motor vehicles for not less than 180 days but not more than one (1) year if you committed certain acts that would be crimes if committed by an adult, including dealing in a controlled or counterfeit substance, possessing a controlled substance or a prescription drug, or conspiring to commit these acts, or that your operator's license or permit shall be invalidated or that your learner's permit not be issued for at least 180 days but not more than two (2) years for repeating violations, or if the crimes above were committed on school property or within 1000 feet of school property.

NOTE: USE THE FOLLOWING IF THE JUVENILE IS A REPEAT TRUANT OR CRIME DELINQUENT:

and

I could reinstate the license or permit before the maximum period of invalidation ends if no further delinquent acts occur.

(Go to para. 35 in dialogue next.)

NOTE: USE THIS ONLY IF THE JUVENILE IS A STATUS OFFENDER.

- a. I could order you to receive supervision by the probation department (or the county welfare department).
- b. I could order you to receive out-patient treatment at a social service agency, or a psychological, psychiatric, medical or educational facility, or from an individual practitioner.
- c. I could remove you from your home and place you in another home or shelter care facility.
- d. I could award wardship over you to any other person or shelter care facility.
- e. I could partially or completely emancipate you.
- f. I could order you or your parent, guardian or custodian to receive family services.
- g. (If juvenile is a runaway or truant, add the following:)
The court can place you in a nonlocal secure private facility, a local secure private facility, a local secure public facility, a local alternative facility approved by the juvenile court or with the Department of Correction.

35. COURT: Do you have any questions about what the Court could do?

A:

36. COURT: _____, I now need to know if you admit or deny
(name of juvenile)

allegations of the petition. If you admit the allegations, you are waiving all of your rights that I have read to you. You will be testifying against yourself. You will not have a trial. Do you understand this?

A:

37. COURT: Have you had a chance to consult with your _____

(parent and/or attorney)

about the charge, your rights and the possible dispositions?

A:

38. COURT: Are you ready to admit or deny the allegations at this time?

A:

39. COURT: Do you admit or deny the allegations?

A:

[After admission, place juvenile under oath]

NOTE: If the juvenile denies the allegations, delete paragraphs 40 through 51.

NOTE: Questions 40 through 44 are optional and are to be asked only if the juvenile be of an age of understanding.

40. COURT: _____, have you or anyone else received or been given anything of value to induce you to admit the allegations?
A:
- 41 COURT: Have you or anyone else been offered any leniency or special treatment to induce you to admit the allegations?
A:
42. COURT: Has anyone forced or threatened or placed you or anyone else in fear to induce you to admit the allegations?
A:
43. COURT: Do you feel that your admission is of your own free will and voluntary act?
A:
44. COURT: Are you satisfied with your attorney and do you feel that he/she is properly representing you?
A:
45. COURT: Do you still want to admit the allegations?
A:

NOTE: If the juvenile wishes to withdraw his admission and enter a denial, proceed to paragraph 52.

46. COURT: By admitting the acts of delinquency, is it true that you are telling me that you did commit the acts alleged in the petition that I read to you?
A:
47. COURT: Tell me in your own words what happened as it concerns the acts of delinquency alleged in the petition.
A: (The juvenile should then give a narrative of all elements to establish a factual basis for each essential element of the delinquent act. The court may need to ask leading questions to insure compliance.)

NOTE: If the minor was able to state a narrative of all facts necessary to establish the offense, then delete paragraphs 48 through 51.

48. COURT: Mr./Ms. Prosecutor, would you please present evidence or a summary of the evidence to establish a factual basis for the charge of delinquency.
A:
49. COURT: _____, is the testimony or the summary of the evidence that you
(name of juvenile)
have heard true and correct as you recall it?
A:
50. COURT: Mr./Mrs. Prosecutor, do you have any questions you would like to ask the juvenile concerning the act of delinquency?
51. COURT: _____, do you have anything you would like to add concerning

(juvenile/attorney)
the facts of the case?
A:

52. COURT: Court now finds (herein enter record pursuant to D-6.03, Order on Initial Hearing on Delinquency Petition Crime Delinquent or D-6.04, Order on Initial Hearing on Delinquency Petition Status Delinquent; [if a restrictive placement will be considered, it MAY be referred to the local coordinating committee for review]; D-6.05, Order on Initial Hearing on Delinquency Petition Denial of Delinquency.

NOTE: Child support guideline worksheets shall be submitted to the Court, as in domestic relations cases to determine reimbursement for service.

53. COURT: If all parties agree to proceed immediately to disposition, the court may hold a dispositional hearing.

Code Conversion Table

[illegible]

SCOPE NOTE
Fact-Finding Hearings

Fact-finding hearing:
IC 31-6-4-14.

Continuance at the close of all evidence:
IC 31-6-4-14(d).

Discharge based on time delays/State's capacity to seek continuance:
IC 31-6-7-6.

Time for fact-finding hearing:
IC 31-6-7-6(b) and (c).

Non-compliance with these time requirements entitles a juvenile to release from detention, but does not entitle the juvenile to dismissal of the juvenile case.

See Scope Note - D-6.01

Burden of proof:
IC 31-6-7-13:
Delinquency: beyond a reasonable doubt.
All other findings (i.e. Modification of orders, Violation of probation): preponderance of evidence.

A finding by a juvenile court that a child committed a delinquent act must be based upon proof beyond a reasonable doubt. **Jonaitis v. State**, 437 N.E.2d 140 at 142, (Ind. App., 1982).

The findings and judgment of the trial court will be affirmed on appeal if there is evidence of probative value from which a trier of fact can reasonably find existence of each element of the offense charged beyond a reasonable doubt. **Matter of Bridges**, 474 N.E.2d 529 (Ind. App., 1985).

Written findings:
IC 31-6-4-14(e)

In all cases where finding of delinquency is based on a delinquent act that would be a felony, if committed by an adult, the juvenile court shall state in the findings the specific statute that was violated and the class of felony had it been committed by an adult.

The failure of a referee to make an adequate written record of findings and recommendations pursuant to IC 31-6-9-2(b) is error. **R.S. v. State**, 435 N.E.2d 1019 at 1020 (Ind. App., 1982)

Restrictive placement:
If judge or probation officer believes that a restrictive placement will be made, the local coordinating committee may be convened.
IC 31-6-14-1, *et seq.*

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER OF FACT-FINDING HEARING ON DELINQUENCY PETITION

(Order Finding Child is a Delinquent Child)

The State of Indiana appears by _____, (Deputy/Prosecuting Attorney) (Attorney for County Office of Family and Children). The child, _____, and his parent(s), _____ appear in person and by _____, attorney, representing the child (and child's parent[s]). The (Intake Officer), _____, appears.

The delinquency petition comes on for Fact-finding Hearings.

(Select appropriate paragraph)

The Court being duly advised now finds that said child did commit the following acts of delinquency, to-wit:

and that the child is a delinquent child.

or

The Court finds that the act(s) would constitute a felony if committed by an adult. The Court finds that the statute(s) violated by the child, and the class of felony, if committed by an adult, (is) (are):

Statutory Citation and Offense:

Class of Felony:

(Select appropriate paragraph)

Upon such finding, the Court now enters judgment that said child is a delinquent child as defined by IC 31-6-4-1.

or

Upon such finding, the Court now enters judgment that said child is a delinquent child as defined by IC 31-6-4-1(b)(1).

- (A) The Court orders _____ to prepare and file a Predispositional Report and the Court schedules a Dispositional Hearing in this case for the _____ day of _____, 19____, at _____ o'clock _____ M. and further orders:_____.
- (B) Court refers possibility of restrictive placement to local coordinating committee for review.
- (C) By agreement of the parties, an immediate Dispositional Hearing is requested and held.

So ordered this ____ day of _____, 19__.

Judge

Distribution:

R.J.O., File

Prosecuting Attorney/Attorney for O.F.C.

Probation Department

Child and Parent/Guardian

Child's Counsel

☐ GAL/CASA

☐ Office of Family and Children/Local Coordinating Committee

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER ON FACT-FINDING HEARING ON DELINQUENCY PETITION

(Order Finding Child is not a Delinquent Child)

The State of Indiana appears by _____,
 (Deputy/Prosecuting Attorney) (Attorney for County Office of Family and Children). The child,
 _____, and his parents, _____, attorney,
 _____ representing the child (and his parent[s]). The (Intake Officer),
 _____, appears.

The delinquency petition comes on for Fact-finding Hearing.

The Court being duly advised now finds that said child is not a delinquent child and the child is discharged from the jurisdiction of this Court in this case.

So ordered this ____ day of _____, 19__.

Judge _____

Distribution:

R.J.O., File
 Prosecuting Attorney/Attorney for O.F.C.
 Probation Department
 Child and Parent/Guardian
 Child's Counsel
 [] GAL/CASA

Code Conversion Table

[illegible]

SCOPE NOTE

Predispositional Report

If a child is found to be a delinquent child, the court must order a written predispositional report to be filed by a probation officer or caseworker. A predispositional report must include a recommendation for the care, treatment or rehabilitation of the child:

IC 31-6-4-15(a)

The child, the child's parents, guardian, guardian ad litem, custodian, or court appointed special advocate have the option of filing alternative predispositional report with the court:

IC 31-6-4-15(a)

The person preparing the report must consider the necessity, nature, and extent of participation by a parent, guardian or custodian in a program of care, treatment or rehabilitation for the child.

IC 31-6-4-15(b)

IC 31-6-1-1(5)

At the dispositional hearing, the court must consider the necessity, nature and extent of participation by a parent, guardian or custodian in a program of care, treatment and rehabilitation for the child.

IC 31-6-4-15.3(a)(2)

The court can order a parent, guardian or custodian to participate in a program of care, treatment or rehabilitation:

IC 31-6-4-15.8

IC 31-6-4-17

The person preparing the predispositional report shall also prepare a financial report on the parent or guardian of the estate to assist in determining their financial responsibility to provide services:

IC 31-6-4-15(c)

Assessment of costs and obligations of parents, guardians or custodians including reimbursements:

IC 31-6-4-18

IC 33-9-11.5-6

The person preparing the report shall recommend a program of care, treatment or rehabilitation that:

- (1) is in the best interest of the child;
- (2) least interferes with family autonomy;
- (3) is least disruptive of family life;
- (4) imposes the least restraint on the freedom of the child, his parents, guardian or custodian; and
- (5) provides reasonable opportunity for participation by the child's parents, guardian or custodian IC 31-6-4-15(d).

The court may authorize mental and physical examinations on both emergency and non-emergency basis:

IC 31-6-7-12.

Predispositional reports are to be made available within a reasonable time before the dispositional hearing unless they contain information which should not be released to the child or child's parent, guardian or custodian. A predispositional report must be released to the child's attorney, guardian ad litem, court appointed special advocate or any attorney representing the parent, guardian or custodian. The court may provide a factual summary of the predispositional report to the child or child's parent, guardian or custodian:

IC 31-6-4-15(f).

If judge or probation officer believes that a restrictive placement will be made, the prosecutor, judge, and members of the local coordinating committee should be alerted.

IC 31-6-14-1, *et seq.*

The predispositional report may be comprised of the initial preliminary inquiry report with additional required information added thereto pursuant to IC 31-6-4-15. (USE FORM D-3.06.)

See **Howard v. State**, 372 N.E.2d 1237 (Ind. App., 1978).

PROCEDURE

Predispositional Report

I. Preparation, contents, and distribution of report.

Prior to the dispositional hearing, a predispositional report must be prepared by an intake officer upon request of the court. The report should be in writing and should be made available to the child, child's parent, guardian or custodian within a reasonable time period prior to the dispositional hearing. If the juvenile court determines that the predispositional report contains information that should not be released to the child, child's parents, guardian or custodian for review, the court may, if desirable, provide a factual summary of the predispositional report to the child, the child's parents, guardian or custodian. The court must provide the predispositional report to a guardian ad litem, court appointed special advocate, or to any attorney representing either the child or the child's parents, guardian or custodian for their review.

- A. The report should include such matters as the child's legal history, home and environmental situation, school background and evaluation, personal history, community attitudes, social condition, health and emotional stability and any other relevant matters.
[Use Standard P.I./P.D.R. from Ind. Jud. Center]
- B. Diagnostic evaluations can be ordered to supplement the dispositional reports. See IC 31-6-4-15(e).
- C. Financial reports of the parents or estate of the child must be included in the predispositional report. The financial analysis should be sufficiently comprehensive to enable the court to determine the financial responsibility of the parent or the guardian of the estate at the dispositional hearing or at any hearing conducted thereafter for that purpose.
[Use Standard P.I./P.D.R. from Ind. Jud. Center]
- D. A recommendation must be made concerning the care, treatment or rehabilitation of the child taking into consideration the necessity, nature and extent of the participation by the parent, guardian or custodian in a treatment program.
[Use Standard P.I./P.D.R. from Ind. Jud. Center]
- E. The predispositional report should consist of statements of fact except in the evaluation and recommendation sections.
[Use Standard P.I./P.D.R. from Ind. Jud. Center]
- F. If judge or probation officer believes that a restrictive placement will be made, the prosecutor, judge, and members of the local coordinating committee should be alerted. IC 31-6-14-1, *et seq.*
- G. The child, the child's parents, guardian, custodian, guardian ad litem or their attorney may submit written alternatives to the predispositional report or present facts that support a less severe disposition or alternative dispositions.

*You may insert a copy of the
Standard Preliminary Inquiry/Predisposition Report
promulgated by the Indiana Judicial Center*

Code Conversion Table

CHAPTER 11: Dispositional Hearings		
Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
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1	31-6-4-15.3(e)	31-37-18-6
1	31-6-4-15.3 through 15.8	31-37-18-1 through 18
1	31-6-4-18.5	31-9-2-15 and 31-37-19-26
1	31-6-4-15.4	31-37-19-1
1	31-6-4-15.4(a)(1)	31-37-19-1(1)
1	31-6-9-4(b)(5)	31-31-5-4
1	31-6-4-15.4(a)(2)	31-37-19-1(2)
1	31-6-4-15.4(2) and (3)	31-37-19-1(2), (3) and (4)
2	31-6-4-15(b)	31-37-17-2
2	31-6-4-15.3(f)	31-34-19-7
2	31-6-4-15.4(c)	31-37-19-3
2	31-6-4-15.4(a)(4)	31-37-19-1(4)
2	31-6-4-15.4(a)(5)	31-37-19-1(5)
2	31-6-4-15.7	31-37-19-27
2	31-6-4-15.4(a)(6)	31-37-19-1(6)
3	31-6-4-15.4(a)(7)	31-37-19-1(7)
3	31-6-4-15.4(b)	31-37-19-2
3	31-6-4-1(b)(1)	31-37-1-2
3	31-6-4-15.6	31-37-19-7
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3	31-6-4-15.6(a)	31-37-19-7
3	31-6-4-15.9(b)(8)	31-37-19-9
4	31-6-4-15.9(h)	31-37-19-6(b)(2)

4	31-6-4-15.9(b)(1)	31-37-19-5(b)(1)
4	31-6-4-6.5(e)	31-37-7-4
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5	31-6-4-15.9(a)(2)	31-37-19-6(b)(2)
5	31-6-4-15.6(c)	31-37-19-8
5	31-6-4-15.9(k)	31-37-19-21
5	31-6-4-15.9(a)(4)	31-37-19-6(b)(2)
5	31-6-4-15.4(c)	31-37-19-3
5	31-6-4-15(b)	31-37-17-2
5	31-6-4-15.3(f)	31-34-19-7
5	31-6-4-15.9(a)(5)	31-37-19-6(b)(2)
5	31-6-4-15.9(a)(6)	31-37-19-6(b)(2)
5	31-6-4-17	31-37-16
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6	31-6-4-15.9(l)	31-37-19-22
6	31-6-4-15.9(j)	31-37-19-12
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7	31-6-4-15.9(a)	31-37-19-6
7	31-6-4-15.9(b)	31-37-19-5 and 6
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8	31-6-1-12	31-32-12-1

8	31-6-4-15.3(c)	31-37-18-3
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9	31-6-4-15.3(g)	31-37-18-7
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9	31-6-4-18	31-40-1
9	31-6-4-18(c), (e) and (f)	31-40-1-3 and 5
10	31-6-4-18	31-40-1
10	31-6-2-3	31-30-2-1
10	31-6-4-15.8	31-37-19-24
10	31-6-4-17	31-37-15-1
10	31-6-4-18(f)	31-40-1-5
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16	31-6-7-12(b)	31-32-12-2
17	31-6-4-15(e)	31-32-17-5
17	31-6-4	31-38-2-1

17	31-6-4-18.5	31-37-19-26
17	31-6-4-15.3(e)	31-37-18-6
17	31-6-4-1(a)(2) through (a)(6)	31-37-2-2 through 6
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20	31-6-4-15.7(b)	31-37-19-27
20	31-6-4-15.4(a)(6)	31-37-19-1
20	31-6-4-15.4(b)	31-37-19-2
21	31-6-7-16(c) or (f)	31-37-22-5 and 6
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21	31-6-7-16(c)	31-37-22-5
21	31-6-7-16(f)	31-37-22-6
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26	31-6-4-18(f)	31-40-1-5
26	31-6-4-15.8	31-37-19-24
26	31-6-5-1 <i>et seq</i>	31-35-1-1, 31-35-2-1, 31-35-3-1
26	31-6-4-17	31-37-15-1
26	31-6-4-17(c)	31-37-16-3
CHAPTER 11: Dispositional Hearings		
Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
27	31-6-4-15.3(i)	31-37-18-9
27	31-6-7-16	31-37-22-1
34	31-6-4-15.3(i)	31-37-18-9
40	31-6-4-15.3(i)	31-37-18-9
41	31-6-4-15.4	31-37-19-1
43	31-6-4-15.3(i)	31-37-18-9
44	31-6-4-15.9(a)(1)	31-37-19-6
44	31-6-7-16(d)	31-37-22-7
44	31-6-4-15.9(b)(8)	31-37-19-9
44	31-6-4-15.9(h)	31-37-19-10
47	31-6-2-3	31-30-2-1
48	31-6-4-1(a)(2)	31-37-2-2
50	31-6-4-1(a)(3)	31-37-2-3

SCOPE NOTE
(Dispositional Hearings)

Reasons for holding a dispositional hearing:
IC 31-6-4-15.3(a).

Guidelines in determining final disposition:
IC 31-6-4-15.3(e).

Conduct of hearing:
IC 31-6-4-15.3 through IC 31-6-4-15.8.

Legal Settlement for school purposes:

The juvenile court shall make a finding of legal settlement of the child in a dispositional order or modification order when the court places a child or changes the placement of a child. This affects transfer tuition fees. IC 31-6-4-18.5; IC 20-8.1-6.1-1 [Legal Settlement]. The juvenile court shall, within ten days of placement, comply with the reporting requirements under IC 20-8.1-6.1-5.5 concerning the legal settlement of the child.

Dispositional alternatives for status delinquents:
IC 31-6-4-15.4.

1. Supervision.

Authority to place child under supervision:
IC 31-6-4-15.4(a)(1).

Duty of probation officer to supervise:
IC 31-6-9-4(b)(5).

2. Outpatient treatment.

Authority to order psychiatric, psychological, social services, medical or educational treatment:
IC 31-6-4-15.4(a)(2).

3. Placement of child in non-secure facilities.

Authority to remove child from his home and place him in another home or shelter care facility.
IC 31-6-4-15.4(2)(3).

If the probation officer or caseworker believes that an out-of-home placement would be appropriate for a delinquent child, the probation officer or caseworker **shall** consider placement of the child with a suitable and willing relative before other out-of-home placement.

IC 31-6-4-15(b)

When the court enters a dispositional decree that includes an out-of-home placement, the court shall consider placement with a suitable and willing blood or adoptive relative before other out of home placement

IC 31-6-4-15.3(f)

The court may not place the child in a shelter-care facility outside the child's county of residence if there is a shelter-care facility with adequate services within the child's county of residence. IC 31-6-4-15.4(c)

4. Wardship.

Authority to award wardship of a child to any person or shelter care facility. This does not

include right to consent to adoption.

IC 31-6-4-15.4(a)(4).

Award of wardship to any person does not mean Division of Mental Health [**In Re Garrett**, 631 N.E.2d 11 (Ind.App.1994)] or Office of Family and Children [**Lake County Office of Family & Children v. Odisho** 656 N.E.2d 536 (Ind.App. 1995)].

NOTE: The Juvenile Benchbook Committee recommends that the County Office of Family and Children be ordered to pay the costs of placement and services. See IC 12-19-7.

5. Complete or partial emancipation.

Authority to emancipate a child under narrow guidelines:

IC 31-6-4-15.4(a)(5); IC 31-6-4-15.7

6. Family Services.

Order the child and his parent, guardian or custodian to receive family services.

IC 31-6-4-15.4(a)(6)

7. Contact order.

Order a person who is a party to refrain from direct or indirect contact with the child.

IC 31-6-4-15.4(a)(7)

Dispositional orders entered under this provision shall be distributed in accordance with IC 31-6-4-15.4(b).

Dispositional alternatives for crime delinquents as defined by IC 31-6-4-1(b)(1):

IC 31-6-4-15.6

IC 31-6-4-15.9

1. Award wardship to either the Indiana Department of Correction for housing in any Correctional facility for children or to any community-based correctional facility for children. Wardship does not include right to consent to adoption:

IC 31-6-4-15.6(a)(3) IC 31-6-4-15.9(a)(1).

Juvenile must be at least twelve (12) and not over eighteen (18) years of age, or act must be a violation of IC 7.1-5-7. If murder, child must be at least ten (10) years of age.

IC 31-6-4-15.6(a)

IC 11-1-1-2.2

NOTE: If a delinquent child is committed to the Department of Correction as a dispositional alternative, then the committed child must be accompanied by commitment papers prescribed by the department of correction. The court should also send education information on the juvenile. Although not required by statute, the DOC would like this information to insure proper placement of the juvenile in their education programs as quickly as possible.

2. **Determinate Sentencing:** Additional actions by court on behalf of delinquent child:

(A) **IC 31-6-4-15.9(b)(8):** If the child:

(1) is at least thirteen (13) years of age and less than sixteen (16) years of age; and

- (2) committed an act that, if committed by an adult, would be:
murder (IC 35-42-1-1); or
kidnapping (IC 35-42-3-2); or
rape (IC 35-42-4-1); or
criminal deviate conduct (IC 35-42-4-2); or
robbery (IC 35-42-5-1), if it was committed while armed with a deadly weapon, or if it results in bodily injury or serious bodily injury;

the Court may order wardship of the child to the department of correction for a fixed period that is not longer than the date the child becomes eighteen (18) years of age, subject to the provisions of IC 11-1-2-1. Notwithstanding IC 11-1-2-5, the department of correction may not reduce the period ordered under this subdivision.

- (B) **IC 31-6-4-15.9(n)** : If the child is adjudicated a delinquent child for an act that if committed by an adult would be:

- (1) a felony against a person; or
(2) a Class A or Class B felony that is a controlled substances offense under IC 35-48-4-1 through IC 35-48-4-5; or
(3) burglary as a Class A or Class B felony under IC 35-43-2-1;

the Court may place the child in a facility authorized under this section for not more than two (2) years if the child is at least fourteen (14) years of age at the time the child committed the act for which the child is being placed and the child has two (2) unrelated prior adjudications of delinquency for acts that would be felonies if committed by an adult. Notwithstanding IC 11-1-2-5, the department of correction may not reduce the period ordered under this subsection.

3. **Sex Offender Registration:** IC 31-6-4-15.9(b)(1) and IC 5-2-12-4. If a child has been adjudicated a delinquent for an act that would be a “sex offense” if committed by an adult, the child may be required to register as a sex offender. See statute for prerequisites.
4. **Secure detention:** A court may not place a child in a facility outside the child’s county of residence if there is a comparable facility with adequate services. IC 31-6-4-6.5(e).

Confinement in a juvenile detention facility for ninety (90) days or less for juveniles less than seventeen (17) years old:
IC 31-6-4-15.9(a)(2).

Confinement in a juvenile detention facility for children seventeen (17) years of age or older for up to one-hundred and twenty (120) days:
IC 31-6-4-15.9(a)(3).

Confinement under IC 31-6-4-15.9(a)(2) may be continuous or intermittent and include weekends or nights:
IC 31-6-4-15.6(c).

NOTE: There are more stringent standards for detention centers that hold juveniles on a post-disposition basis for over thirty (30) days. See IC 31-6-4-15.9(k)

5. Remove a juvenile from the home and place him in another home or shelter care facility. IC 31-6-

4-15.9(a)(4). The court may not place the child in a shelter-care facility outside the child's county of residence if there is a shelter-care facility with adequate services within the child's county of residence. IC 31-6-4-15.4(c) If the Court believes that an out-of-home placement would be appropriate for a delinquent child, the court **shall** consider placement of the child with a suitable and willing relative. IC 31-6-4-15(b).

When the court enters a dispositional decree that includes an out-of-home placement, the court shall consider placement with a suitable and willing blood or adoptive relative before other out of home placement. IC 31-6-4-15.3(f)

6. Award wardship to any person or shelter care facility. Does not include right to consent to adoption:

IC 31-6-4-15.9(a)(5)

Award of wardship to any person does not mean Division of Mental Health [**In Re Garrett**, 631 N.E.2d 11 (Ind.App. 1994)] or Office of Family and Children [**Lake County Office of Family & Children v. Odisho**, 656 N.E.2d 536 (Ind.App. 1995)].

NOTE: The Juvenile Benchbook Committee recommends that the County Office of Family and Children be ordered to pay the costs of placement and services. See IC 12-19-7.

7. Place a juvenile in a secure facility for children licensed under the laws of any state:

IC 31-6-4-15.9(a)(6).

8. Order a person who is a respondent under IC 31-6-4-17 to refrain from direct or indirect contact with the child.

IC 31-6-4-15.9(a)(7).

Dispositional orders entered under this provision shall be distributed in accordance with IC 31-6-4-15.9(l).

9. Order HIV testing if juvenile is convicted of certain sex offenses and/or controlled substance offenses.

IC 31-6-4-15.9(j)

10. Suspension of Driver's License or Learner's Permit:

(A) Graffiti: The juvenile court may suspend an operator's license or learner's permit of a delinquent child who committed criminal mischief or institutional criminal mischief under IC 35-43-1-2 that involves the use of graffiti. See: IC 31-6-4-15.9(f). The court may rescind the order for suspension or invalidation if the court determines that the child has removed or painted over the graffiti or made other suitable restitution. IC 31-6-4-15.9(i).

(B) Repeat Truants: The juvenile court shall order the invalidation of the child's driver's license or learner's permit by the bureau of motor vehicles for not less than 90 or more than 180 days if the child is a repeat truant. IC 31-6-4-15.9(c). The Court may reinstate the license or permit before the maximum period of validation ends if no further delinquent acts occur. IC 31-6-4-15.9(h).

(C) Drug Offenses: The juvenile court shall order the invalidation of the child's driver's license or permit or that the child's permit not be issued by the bureau of motor vehicles for not less than 180 days but not more than one (1) year if the child committed certain acts that would be crimes if committed by an adult, including dealing in a controlled or counterfeit

substance, possessing a controlled substance or a prescription drug, or conspiring to commit these acts, or invalidate the child's operator's license or learner's permit or order that the permit not be issued for at least 180 days but not more than two (2) years for repeat violations of the crimes above, or if these crimes were committed on school property or within 1000 feet of school property. IC 31-6-4-15.9(d) & (e). The Court may reinstate the license or permit before the maximum period of validation ends if no further delinquent acts occur. IC 31-6-4-15.9(h).

- (D) Whenever the court orders the invalidated or denial of issuance of a driver's license or permit the child shall surrender to the court all driver's licenses or permits of the child and the court shall immediately forward the same to the bureau of motor vehicles. IC 31-6-4-15.9(g).

NOTE: The Benchbook committee recommends a copy of this court order concerning the driver's license or permit be forwarded by the juvenile court to the Bureau of Motor Vehicles and BMV form SR-16 be completed.

11. Home detention.

Court may order a crime delinquent into home detention under IC 35-38-2.5.

NOTE: The Benchbook Committee believes the court can order a status delinquent placed in home detention and to pay a fee for this service.

12. In addition to any order entered under IC 31-6-4-15.9(a), the court may enter one or more of following orders: IC 31-6-4-15.9(b):
- (1) Order supervision of the child by the probation department or the county office of family and children; under certain circumstances.
 - (2) Order the child to receive outpatient treatment at a social service agency, psychological, psychiatric, medical, or educational facility, or from an individual practitioner;
 - (3) Order the child to surrender his driver's license to the court for a specified period of time.
 - (4) Order the child to pay restitution if the victim provides reasonable evidence of his loss, which the child may challenge at the dispositional hearing;
 - (5) Partially or completely emancipate the child under IC 31-6-4-15.7;
 - (6) Order the child to attend an alcohol and drug services program established under IC 12-23-14; or
 - (7) Order the child to perform community service for a specified period of time.

If a status delinquent violates IC 7.1-5-7-7.1 or 10, which is using a false driver's license as identification or to enter a bar, the minor's driver's license may be revoked for up to one year.

Trial court may recommend that Indiana Department of Correction continue commitment until juvenile is 21, notwithstanding plea agreement for commitment to Boy's School. **In re J.A.W.**, 504 N.E.2d 334 (Ind.App. 1987).

The court cannot impose both a sentence to the Department of Correction and a jail sentence (now secure detention). **R.L. v. State**, 437 N.E.2d 482 (Ind.App. 1982).

The juvenile court is not required to suspend a sentence in order to impose supervision. **Matter of L.J.M.**, 473 N.E.2d 637 (Ind.App.1985).

Miscellaneous:

Mentally ill child: Mental or physical examination or treatment. IC 31-6-7-12.

If it appears to the juvenile court that a child is mentally ill, it may refer the matter to the court having probate jurisdiction for civil commitment proceedings under IC 12-26. If so referred, the juvenile court shall either discharge the child or continue its proceedings pending the outcome of the proceedings under IC 12-26.

IC 31-6-4-15.3(c)

The juvenile court may also initiate a commitment proceeding under IC 12-26-1-4.

IC 31-6-4-15.3(c)

Physical examination not required to send juvenile to Department of Correction:

IC 11-1-3-2.

Pregnant juveniles will not be accepted by Department of Correction:

IC 11-1-2-2(3)

Transporting females - matron to accompany.

IC 36-8-1-5(c)

Participation of parent in program for care, treatment or rehabilitation:

IC 31-6-4-15.8; IC 31-6-4-17.

A juvenile court must make findings of fact upon the record specifying the reason(s) for the disposition it orders.

IC 31-6-4-15.3(i)

NOTE: Certain delinquents may qualify for reimbursement of the cost of their placement if they meet the requirements of the Title IV-E foster care program. This program generally requires that "reasonable efforts" to reunify the child with the family are being made in a similar manner as in CHINS cases and additional findings and required case reviews for these delinquents should be handled like CHINS cases as noted in the dispositional hearing section.

If child is removed from his home, the dispositional report shall be sent to persons or institutions receiving the child:

IC 31-6-4-15.3(g)

A juvenile court must notify the parties of the procedures for modification the dispositional decree:

IC 31-6-4-15.3(h); IC 31-6-7-16.

Juvenile court is final arbiter of the appropriate treatment for a CHINS. **In Re E.I.**, 653 N.E.2d 503 (Ind.App. 1995)

Prerequisites for GED for juveniles under 18:

The individual is at least seventeen, is not subject to compulsory school attendance and achieves satisfactory high school level scores on the GED. IC 20-1.1-12.1-1.

Evidence and Hearing:

Admissibility of predispositional report:

IC 31-6-4-15.3(b), IC 31-6-4-15.

Recommendation of the local coordinating committee may be considered:

IC 31-6-14-9(a) & 12.

Hearsay evidence is admissible at a dispositional hearing.

Matter of L.J.M., 473 N.E.2d 637 at 643 (Ind.App.1985).

Financial responsibility of parents:

IC 31-6-4-18.

Prior to the dispositional hearing each parent shall furnish to the court a current and complete child support worksheet. Each parent of a child shall be ordered to pay for services provided to the child. If institutional placement is ordered the court shall refer to the child support guidelines adopted by the Indiana Supreme Court. Exception: If the court finds that the parents/guardians are unable to pay, or justice would not be served by ordering payment, the order of reimbursement need not be issued.

IC 31-6-4-18(c), (e) & (f).

The statute governing the financial responsibility of parents for services is IC 31-6-4-18, which contemplates a hearing. The burden of proof is by preponderance of the evidence.

L.J.F. v. Lake County Department of Public Welfare, 484 N.E.2d 40 (Ind.App. 1985).

Parents of a juvenile whose delinquency petition was dismissed are not financially responsible for the attorney fees of a court-appointed counsel under Ind. Code § 31-6-4-18. This statute provides that the county must pay this fee.

Woolf v. State, 545 N.E.2d 509 (Ind. App. 1989).

When the court finds that no adjudication of delinquency was made, and no evidence is introduced to support a finding that the parents are financially able to reimburse a county for expenses relating to a juvenile incarceration in Boys School, a parent or guardian could not be ordered to pay for various services under Ind. Code 31-6-4-18.

Carnahan v. State, 558 N.E.2d 845 (Ind.App. 1990).

Upon adjudication, parents of crime delinquents shall be required to reimburse the county for public defender services if able. The money shall be deposited into the county supplemental public defender services fund. IC 33-9-11.5 *et seq.*

Parents obligation to provide services and financial support:

IC 31-6-2-3; IC 31-6-4-15.8; IC 31-6-4-17; IC 31-6-4-18; IC 33-9-11.5-6.

Remedy for parents failure to provide services or pay for services ordered by the court:

IC 31-6-4-18(f); IC 31-6-4-17; IC 31-6-7-15; IC 33-9-11.5-6.

A trial court may order a parent of a delinquent child who is made a ward of the local welfare department to use the portion of the parent's social security disability benefits for the child's care to be used to support the child in the county's children's home.

Ritter v. Bartholomew County D.P.W., 564 N.E.2d 329 (Ind.App.1990).

Secure detention of repeat runaways or truant:

A juvenile court can place a repeat or a truant in a nonlocal secure private facility, local secure private facility, local secure public facility, a local alternative facility approved by the juvenile court or with the Department of Correction.

IC 31-6-7-16(d)

A written warning of the consequences of a violation of the placement of a runaway must be received at the hearing in which the placement was ordered and placed in the record.

IC 31-6-7-16(c)(2)

A written warning of the consequences of a failure to comply with the compulsory school attendance law must be received at the hearing in which the placement was ordered and placed in the record.

IC 31-6-7-16(f)(2)

Contempt of court:

IC 31-6-7-15: *See "Contempt Checklist" D-16.07.*

Also see: Civil Benchbook, Chapter 70: Contempt.

The juvenile court may punish a person for contempt of court under IC 34-4-7, IC 34-4-8, or IC 34-4-9.

A. **Direct Criminal Contempt**

1. An act committed **in the presence** of the Court or so near the court as to **interrupt court proceedings while court is in session**. It is the displaying of disruptive or unlawful behavior in the presence of and within the knowledge of the judge.
2. Procedures for finding of direct criminal contempt.

PROCEEDINGS ARE SUMMARY - BEFORE JUDGE WHO OBSERVED CONDUCT

- (a) The Court shall state the exact words, acts or conduct that it believe constitutes the contempt.
- (b) The defendant should be allowed to make a record of any explanation, extenuation or denial by way of response.
- (c) Finding must be beyond a reasonable doubt.
- (d) Make a judgment of either:
 - acquittal and discharge
 - guilty and punishment (up to six months) jail and or fine limited by reasonableness.
- (e) Proceedings reduced to writing either by the judge or court reporter and to include the allegation, answer, and judgment.

B. **Indirect Criminal Contempt**

1. An act committed **outside the presence** of the Court but which tends to interrupt, obstruct, embarrass or prevent the due administration of justice.
 - (a) willful disobedience of process or lawful court order. IC 34-4-7-3.
 - (b) Resisting process and Intimidating witnesses. IC 34-4-7-4.
 - (c) False or inaccurate reporting of a case. IC 34-4-7-5.

2. Procedures for finding of indirect criminal contempt.

- (a) Indirect criminal contempt is to be filled **as an independent action**. A separate case number should probably be assigned to the contempt proceeding. (Case law suggests prosecutor or some other court officer should bring the action to the Court's attention by information duly verified by the oath of the informant.)
Denny v. State ex rel. Brady, 203 Ind. 682, 182 N.E. 313, (1932).
- (b) Written rule of court served on the defendant. IC 34-4-7-8. Written rule of court to contain:
- the facts which are alleged to constitute contempt, clearly and distinctly set out
 - time and place of these facts
 - such as to inform of the nature and circumstances of the charge being made
 - time and place to show cause why he/she should not be attached and punished
- (c) Upon failure to appear to answer, person may be attached and punished. If the person appears, but fails or refuses to answer the charge, he/she may be attached and punished. IC 34-4-7-9.
- (d) Special judge must be appointed to hear the matter unless it grew out of willfully resisting, hindering, delaying or disobeying lawful process or court order. IC 34-4-8-1.
- (e) If the defendant answers the charges by showing they do not constitute contempt, even if true, or if the defendant denies, explains, or confesses and avoids the facts to show no contempt was intended, he/she must be acquitted and discharged. IC 34-4-7-9.
- (f) If the defendant in his/her answer does not succinctly deny, explain or avoid the facts to show no contempt exists, he/she may be attached and punished.
- (g) There is no right to changes of venue from the county and no right to a jury trial. The defendant must be given the opportunity to purge himself of the contempt at the time of first appearing. IC 34-4-7-8.
- (h) Punishment may be fine or imprisonment. Imprisonment is thought to be limited to a term of 6 months with the repeal of IC 34-4-7-6. See **Taylor v. Hays**, 418 U.S. 488, 94 S.Ct. 2697, 41 L.Ed. 897 (1974).

C. **Civil Contempt**

1. An act violating an order or decree of the Court made for the benefit of a party. Punishment (fine or imprisonment) is designed to secure compliance and is only coercive in nature. Civil contempt is not governed by the 1879 contempt act. IC 34-4-7-1.
2. Failure to comply with the court order is the element of civil contempt. Any intentional act or omission which violates a court order is a civil contempt even if there was no intention to defy court authority.
State ex rel. McMinn v. Gentry, 229 Ind. 615, 100 N.E.2d 676 (1951).
3. Procedure for finding of civil contempt.
- (a) Proceeding for civil contempt filed in the civil matter out of which it arises. Motion or petition must be verified or supported by affidavit.

- (b) Petitioner carries the burden of proving facts showing contempt, and respondent then has the burden of proving justification, excuse or that failure was not willful or inability to comply because of, for example, illness, poverty or other valid reason.
- (c) There is no right to change of venue from the judge.
In re Savage, 213 Ind. 228, 12 N.E.2d 141 (1938).
- (d) Appointed counsel for indigent respondent facing jail sentence. This would include informing of the right prior to the hearing and would require a determination of indigence and whether the person faces incarceration. See **In re Marriage of Stariha**, 590 N.E.2d 1117, (Ind.App.1987). [Although **Stariha** dealt with contempt for failure to pay child support, it should apply equally to other types of civil contempt when the respondent faces imprisonment.]

D. Punishment

1. Criminal contempt is an affront to the majesty of the law or the dignity of the court; the punishment of such conduct is purely punitive in nature. The primary purpose of punishment is to vindicate the public authority of the court.

- (a) Criminal contempt may be punished by a determinate sentence or fine. **Matter of Craig**, 552 N.E.2d 53 (Ind.App. 1990) *on remand* 571 N.E.2d 1326 (Ind.App. 1991)

The power to punish contempt is limited by reasonableness.

Matter of Craig, 552 N.E.2d at 56 (also note the point that "a sentence for criminal contempt should reflect the 'least possible power adequate to the end proposed' is well taken.")

- (b) With the repeal of IC 34-4-7-6, there is no definite range of penalties; however, the repeal of the punishment statute does not terminate the court's inherent power to punish for contempt but appears instead to remove the previous limitation. An opinion from the United States Supreme Court suggests imprisonment for criminal contempt is limited to six (6) months. See **Taylor v. Hayes**, 418 U.S. 488, 94 S.Ct. 2697, 41 L.Ed.2d 897 (1974). (Contempt of court is a petty offense which may be tried without jury when actual penalty imposed does not exceed 6 months). But note **Blanton v. City of North Las Vegas**, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 520 (1989) (Sixth Amendment may confer jury right for offenses of less than 6 months imprisonment in certain instances).
- (c) It is recommended that in the case of a juvenile under the age of eighteen (18) held in contempt of court, the juvenile be held in the juvenile detention facility. A juvenile held in contempt should be held in accordance with IC 31-6-4-6.5(b).

Since criminal contempt is an offense against the dignity of the Court, and is not a crime as such, a juvenile who violated a Court order by repeatedly running away could not be committed to the Department of Correction on the basis of being a delinquent child as he has committed no act, which if committed by an adult, would constitute a crime. **W.M. v. State**, 437 N.E.2d 1028 (Ind.App. 1982); **T.T. v. State**, 439 N.E.2d 655 (Ind.App.

1982) (Buchanan, C.J., in concurring opinion stated that had proper procedure been followed, the juvenile could have been committed to a secure facility for up to three (3) months for indirect criminal contempt.)

2. Since civil contempt is the violation of a court order made for the benefit of a party, punishment is to secure compliance and is intended only to be coercive in nature to force compliance. **Duemling v. Fort Wayne Community Concerts, Inc.**, 243 Ind. 521, 188 N.E.2d 274, 276 (1963).
 - (a) IC 34-4-7-6 never applied to civil contempt and sanctions in excess of the now repealed statutory limits have been upheld.
Walter v. Jarvie, 221 Ind. 671, 50 N.E.2d 914 (1943).
Thomas v. Woollen, 255 Ind. 612, 266 N.E.2d 20 (1971).
 - (b) A civil contempt judgment is limited to what is necessary to coerce compliance or to compensate the party injured by violation of the order, and a fine is limited to an amount sufficient to prevent future contemptuous actions. **Duemling, supra.**; **Denny v. State ex rel. Brady**, 203 Ind. 682, 182 N.E. 313 (1932); **Chadwich v. Alleshouse**, 233 N.E.2d 162 (1968). Imprisonment continues until the defendant complies with the order unless compliance is impossible. **Brown v. Brown**, 205 Ind. 664, 187 N.E. 836 (1933).

PROCEDURE
(Dispositional Hearing)

I. Conduct of hearing generally.

- A. The dispositional hearing is held by the court to consider:
1. Alternatives for the care, treatment or rehabilitation for the child;
 2. The necessity, nature, and extent of participation by a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for the child; and
 3. The financial responsibility of the parent or guardian of the estate for any services provided for himself or the child.

NOTE: Prior to the hearing have the parents prepare a child support worksheet.

- B. Although IC 31-6-7-6 provides strict time limits from the initiation of juvenile procedures until the fact-finding hearing, the Indiana Juvenile Code is silent as to the time element between the fact-finding hearing and the dispositional hearing. By analogy, in criminal cases, IC 35-4.1-4-2 provides a thirty-day (30) period from the date of conviction to date of sentencing. It is recommended that a juvenile matter proceed to disposition as rehabilitative value in a swift disposition, closely related in time to the commission of the offense and the filing of the petition. However, it must be realized that if diagnostic evaluations are to be made pursuant to IC 31-6-7-12(b) and IC 11-1-2-6, it may be difficult to get an appointment for the evaluation within thirty (30) days not counting additional time to receive and evaluate the recommendation.
- C. At the conclusion of the fact-finding hearing or during the interview with the parents by the intake officer, the parent(s), guardian or custodian of the child should be advised that they have the right to make alternative or supplemental predispositional reports to aid the judge in making a proper disposition.
- D. See D-10.02 for the requirements of a predispositional report.
- E. At the dispositional hearing, the court may permit the child, parents, guardian, custodian or their attorney to present witnesses in support of a disposition.
- F. If the court believe that a more in-depth evaluation is needed than can be provided by the intake officer, the court can have a diagnostic evaluation made to supplement the predispositional report. See IC 31-6-4-15(e).
- G. Recommendation of local coordinating committee must be considered before a restrictive placement, IC 31-6-14. (**Note:** Statute has since been amended. Referral is no longer mandatory). **In Re Tina T.**, 579 N.E.2d 57 (Ind. 1991).
- H. Legal Settlement for school purposes: The juvenile court shall make a finding of legal settlement of the child in a dispositional order, modification order or other decree when the court places a child or changes the placement of a child. This affects transfer tuition fees. IC 31-6-4-18.5; IC 20-8.1-6.1-1 [Legal Settlement]. The juvenile court shall, within ten days of placement, comply with the reporting requirements under IC 20-8.1-6.1-5.5 concerning the legal settlement of the child.

II. Dispositional alternatives

- A. When consistent with the safety of the community and the welfare of the child, the juvenile court shall enter a dispositional decree that:
1. Is in the best interests of the child;
 2. Least interferes with family autonomy;
 3. Is least disruptive of family life;
 4. Imposes the least restraint on the freedom of the child and his parent, guardian or custodian; and
 5. Provides a reasonable opportunity for participation by the child's parent, guardian or custodian. See IC 31-6-4-15.3(e).
- B. Dispositional alternatives for status delinquents. A status delinquent is defined by IC 31-6-4-1(a)(2), (a)(3), (a)(4), (a)(5) and (a)(6).

1. Supervision.

(a) The juvenile code has deleted the word "probation" and uses the word "supervision" which is applicable to the concept of providing guidance for the children who have committed delinquent acts. (The power to impose terms and conditions of supervision is implicit in the authority to supervise.)

USE FORM D-11.05

USE FORM D-11.06

(b) If the court orders a juvenile to be placed under supervision, it is recommended that the court complete the following at the dispositional hearing:

(1) The court instructs the juvenile on the record as to the conditions of probation;

(2) The court instructs the probation officer to prepare a written statement of the conditions enunciated by the court to be reviewed and signed both by juvenile and his or her parent, guardian or custodian and to be filed with the court; and

(3) Although there are no statutory requirements to reduce the terms of supervision to writing in juvenile cases, there is case law in the adult area and a substantial, practical advantage in enunciating the conditions of supervision because it verifies that the juvenile understands each of the conditions the juvenile must meet to complete supervision and impresses upon him or her the need to meet each of the conditions. Also, reduction to writing and review by the probation department with the parents and juvenile present reiterates the expectation of the court and involves parents who contribute greatly to the success or failure of juvenile supervision. Signing the conditions of probation and filing them with the court would reinforce the nature of the conditions and might simplify any future proceedings. When conditions of supervision include referral and cooperation with an agency outside the court, a record of the referral to the agency together with the plan the agency is expected fulfill may be useful because it forces the agency to specify its expectations of the youth and the youth's parents.

USE FORM D-11.04

USE FORM D-11.05

USE FORM D-11.06

2. Outpatient treatment at social service agency, psychological, psychiatric, medical or

educational facility.

- (a) If mental illness is suspected, the juvenile court may transfer the case to the probate court for civil commitment procedures pursuant to IC 12-26 or initiate a commitment proceeding IC 31-6-4-15.3(c).
 - (b) The juvenile court may order psychiatric or psychological care without proceeding under IC 12-26 providing said care be administered on an outpatient basis.
- 3. Removal of child from his home and placement in another home or shelter care facility.
 - (a) This dispositional alternative includes authorization to control and discipline the child.
 - (b) A "shelter care" facility is a non-secure facility.
- 4. Award wardship to any person or shelter care facility.
 - (a) Person includes governmental entity. See IC 31-6-1-24.
 - (b) This does not include the right to consent to adoption.
 - (c) The duties of the guardian are the same as under prior law.
 - (d) At the dispositional hearing, the court may place a child in custody of a person other than that of the child's parent or legal guardian. Although the court may place the child with a relative or other suitable person, it may instead be necessary to designate an agency to be responsible for expending funds for food and shelter for the juvenile, selecting his placement, supervising his behavior, and seeing that his educational and medical needs are met. The court may order the child to be made a ward of the court, or any licensed child placing agency willing to assume wardship.
 - (e) If the child is made a ward, the court should:
 - (1) forward a copy of the disposition order which will notify the county office of family and children of the order of wardship.
 - (2) inform the office of family and children whether placement is to be in a specified facility or if the juvenile will remain in temporary care until the office of family and children locates an appropriate placement.
 - (3) advise the office of family and children if it is to assign a caseworker for supervision of the juvenile or if a probation officer will maintain case orientation.
 - (4) set a date for the submission of a progress report to the court from the supervising person which, if the child is placed in a private institution, should include a progress report from that facility; and
 - (5) order the expenditure of county funds to compensate for the care of the juvenile.
- 5. Partially or completely emancipate the child.

NOTE: The concept of emancipation is contrary to the avowed purpose

of the juvenile code wherein the disposition of decree should be one that least interferes with family autonomy, is least disruptive of family life and provides an opportunity for participation by the parents, guardian or custodian; furthermore it contradicts the theory and general purpose of the juvenile code to "strengthen family life by assisting parents to fulfil their parental obligations". See IC 31-6-4-15.4, IC 31-6-4-15.7 and 31-6-4-15.9(b)(5).

(a) Whenever a juvenile court either completely or partially emancipates a child, it is necessary to specify the terms of the emancipation, some of which are listed in IC 31-6-4-15.7(b).

(b) An emancipated child remains subject to compulsory school laws and to the continuing jurisdiction of the court. See IC 31-6-15.7(b).

6. Family services.

Order the child or his parent, guardian or custodian to receive family services. IC 31-6-4-15.4(a)(6).

7. No contact/Protective order.

Order a person who is a party to refrain from direct or indirect contact with the child. IC 31-6-4-15.4. Dispositional orders entered under this provision shall be distributed according to IC 31-6-4-15.4(b).

See also paragraph IV. concerning protective orders.

8. A repeat runaway or school truant may be placed in a non-local secure private facility, local secure private facility, local secure public facility, local alternative facility approved by the juvenile court, or placed as a ward in the department of correction for housing in a correctional facility for children if the conditions of IC 31-6-7-16(c) or (f) are met. IC 31-6-7-16(d).

(1) With respect to a repeat runaway, in order for 31-6-7-16(c) to apply, a written warning of consequences of a violation must have been given at the hearing during which the placement was ordered placed in the record.

USE FORM D-11.10 for written warning and FORM D-11.07.

(2) In order for IC 31-6-7-16(f) to apply a child must fail to comply with the compulsory school attendance law as a part of a court order with respect to a delinquent act under IC 31-6-4-1(a)(3) and a written warning of the consequences of violation must have been given at the hearing as a result of which the court order was entered, and the same placed in the record. IC 31-6-7-16(d)

(3) If such juvenile is placed in DOC according to this statute, the juvenile court must review this placement every three months.

USE FORM D-11.11 for written warning and FORM D-11.07.

(4) The juvenile court shall give a written warning to a runaway or truant of the consequences of a violation of the placement and the issuance of the warning shall be reflected in the records of the hearing according to IC 31-6-7-16.

C. Dispositional alternatives for crime delinquents.

1. Award wardship to the department of correction for housing in an appropriate correctional facility.

(a) A child under twelve (12) years of age or over eighteen (18) years of age at time of dispositional decree cannot be committed to the department of correction, except, a wardship may be awarded to the department of correction if the child is ten (10) or eleven (11) years of age and is found to have committed an act that would have been murder if committed by an adult.

(b) A child cannot be imprisoned in a secure facility where the juvenile will have more than haphazard or incidental contact with persons charged with or convicted of crimes, except as provided in IC 11-1-2-1. A child must be sent to a juvenile detention facility that meets the standards established by law.

(c) Wardship does not include right to consent to the child's adoption.

(d) If, at the disposition, a juvenile is ordered committed to the department of correction, the court should also issue an order to the Sheriff to transport the juvenile. The court may wish to advise the probation officer at the hearing in reference to the following matters which must be completed prior to actual admission to the institution:

(1) advise the parents of clothing requirements and parental visitation policies or who may be contacted to discuss these matters:

(2) contact the department of correction for the date of admission; and

(3) arrange for school records to be transferred promptly or sent to DOC if already with probation department so that there is no lag in enrollment in the institutional schools.

(e) Referral may be made to local coordinating committee and its recommendations shall be considered.

USE FORM D-11.08

NOTE: If a delinquent child is committed to the department of correction as a dispositional alternative then the committed child must be accompanied by commitment papers prescribed by the department of correction. The court should also send education information.

2. The juvenile under seventeen (17) years of age may be confined for up to ninety (90) days but the court must observe the following restrictions:

(a) the child can only be confined in a juvenile detention center for juveniles;

(b) confinement may not exceed ninety (90) days;

(c) confinement may be on an intermittent or weekend or night basis; and

(d) a child may not be confined in a jail.

(e) a child may only be held sixty (60) days if the underlying offense is a Class C misdemeanor.

If the child is seventeen (17) years of age, the court may order confinement in a juvenile detention facility for children for not more than one hundred twenty (120) days, unless the underlying act is a Class C misdemeanor in which the limit is sixty (60) days.

Placement of a juvenile in a jail was found to violate the 14th Amendment, **D.B. v. Tewksberry**, 545 F. Supp. 896 (D. Oregon, 1982), and may give rise to a §1983 civil rights action. **Hendrickson v. Griggs**, 672 F. Supp. 1126 (N.D. Iowa, 1987).

Indiana complies with federal juvenile jail removal requirements under 42 U.S.C.A. § 5633 and federal regulations.

3. Remove a juvenile from the home and place him in another home or shelter care facility. Recommendation of local coordinating committee shall be considered.
4. Award wardship to any person or shelter care facility. Recommendation of local coordinating committee shall be considered.
5. Placement in a secure private facility licensed under the laws of any state. Recommendation of local coordinating committee shall be considered.

NOTE: Referral may be made to local coordinating committee and its recommendation shall be considered.

6. A crime delinquent can also be required to participate in any dispositional alternative available to a court for a status delinquent or a child in need of services.

- (a) Order supervision of the child by the probation department or the county office of family and children;
- (b) Order the child to receive out-patient treatment at a social service agency, psychological, psychiatric, medical, or education facility, or from an individual practitioner;
- (c) Order the child to surrender his driver's license to the court for a specified period of time;
- (d) Order him to pay restitution if the victim provides reasonable evidence of his loss, which the child may challenge at the dispositional hearing;
- (e) Partially or completely emancipate the child under IC 31-6-4-15.7;
- (f) Order the child to attend an alcohol and drug services program established under IC 12-23-14;
- (g) Order the child to perform community service for a specified period of time.

7. The court can order the juvenile to make restitution for damages the juvenile has caused providing the victim shows reasonable evidence of his loss.

- (a) The child may challenge the amount of restitution at the dispositional hearing and the court may conduct a hearing to determine the actual amount of restitution to be paid, if any.
- (b) If an order of restitution remains unpaid when a child is released from the department of correction, the juvenile court may reinstate jurisdiction and supervise the child until the restitution order is paid under 31-6-2-3(c).

USE FORM D-11.09

III. Participation by parents, guardians or custodians.

- A. Two of the purposes of the juvenile code are to strengthen family life by assisting parents to fulfill

their parental obligation and to remove children from their families only when it is in the child's interests or in the best interests of public safety. Accordingly, parental involvement in the juvenile process is desirable.

- B. The juvenile court may order the parent, guardian or custodian to:
 - 1. obtain assistance in fulfilling his obligation as a parent, guardian or custodian;
 - 2. provide specified care, treatment or supervision for the child; and
 - 3. work with any person providing care, treatment or rehabilitation for the child. See IC 31-6-4-15.8 and IC 31-6-4-17.
- C. The juvenile court's jurisdiction over the parents, guardian or custodian is established in IC 31-6-2-1.1(a). To acquire jurisdiction over a parent, guardian or custodian to require the participation in a program of care, treatment or rehabilitation for a child, procedures outlined in IC 31-6-4-17 and IC 31-6-4-15.8 need to be followed.

As a general rule, a petition must be filed in order to require the participation of parent or responsible adult in a program of care, treatment or rehabilitation for a child. A petition is not required under the following circumstances:

- 1. if the parents are summoned and appear at the initial hearing;
- 2. parents are advised that they may be required to participate in such a program.
- 3. parents have an opportunity to respond to the proposed program;
- 4. parents agree to participate in the program;
- 5. and if the program is then incorporated in a court order.

Note: The order would then be binding on the responsible adult and may be enforced by the court's contempt power.

If the parent refuses to consent to such an order, a "Parental Participation Petition" would then be required. The petition may be filed either at the beginning of the juvenile proceedings or at any time thereafter. The petition may also be incorporated as a part of the petition concerning the child.

- D. At any dispositional hearing or any hearing to modify a dispositional decree, the court can conduct a hearing regarding parental, guardian or custodial participation in a treatment program for the child.
 - 1. The "participation" petition must be verified and its format is set out in IC 31-6-4-17. USE FORM D-12.03
 - 2. The parent, guardian or custodian is entitled to notice and a hearing on the petition concerning their participation and may present evidence at the hearing.
 - 3. Before a responsible adult can be required to participate, the child involved must have been adjudicated a delinquent child or in need of services.
- E. Cost of services.
 - 1. The parent or guardian of the estate of a child found to be a delinquent is financially responsible for any services ordered by the court unless:
 - (a) parent is unable to pay for them;
 - (b) payment would cause an unreasonable hardship on the family; or
 - (c) justice would not be served by ordering payment. See IC 31-6-4-18.

2. The juvenile court shall require the parent or guardian of the estate to reimburse the county in a manner that will cause the least hardship. See IC 31-6-4-18(e).
3. If the parent or guardian of the estate defaults in reimbursing the county, the court may find him in contempt and may enter judgment for the amount due. See IC 31-6-4-18(f).

Parents of a juvenile whose delinquency petition was dismissed are not financially responsible for the attorney fees of a court-appointed counsel under Ind. Code § 31-6-4-18. This statute provides that the county must pay this fee.

Woolf v. State, 545 N.E.2d 590 (Ind.App.1989).

When the court finds that no adjudication of delinquency was made, and no evidence is introduced to support a finding that the parents are financially able to reimburse a county for expenses relating to a juvenile incarceration in Boys School, a parent or guardian could not be ordered to pay for various services under Ind. Code 31-6-4-18. **Carnahan v. State**, 558 N.E.2d 845 (Ind.App.1990). Upon adjudication, parents of crime delinquents shall be required to reimburse the county for public defender services, if able. IC § 33-9-11.5 *et seq.*

- F. Failure of a parent to participate in a treatment program for the child pursuant to IC 31-6-4-15.8 can lead to the termination of the child-parent relationship which procedures are found in IC 31-6-5-1 *et. seq.*
- G. If the court finds the allegation of the participation petition are true, the court shall enter a decree under IC 31-6-4-15.8. See IC 31-6-4-17.

IV. Protective Orders:

- A. A petition may be filed to order a parent to refrain from contact with a child. It must be entitled, "In The Matter of a Protective Order for _____".
- B. The petition must allege the elements in the Ind. Code § 31-6-4-17(c), concerning contact of a particular person with the adjudicated CHINS or Delinquent. Use FORM D-12.07

V. Findings of fact and reasons.

- A. A juvenile court must accompany its dispositional decree with findings of fact on the record concerning the needs of the child for care, treatment or rehabilitation and for participation by parents, guardians and custodians. See IC 31-6-4-16.3(g).
- B. The court shall specify its reasons for the disposition.

VI. Procedures after making the dispositional decree.

- A. The court must send a copy of the predispositional report to any person who receives placement or wardship of the child. If the county office of family and children or other agency receives wardship, the predispositional report should be forwarded to them rather than to the person or persons who may eventually provide care and shelter under the direction of the county office of family and children or service agency.
- B. The juvenile court shall advise the child, his parents, guardian or custodian of the court's power to modify dispositional decrees pursuant to IC 31-6-7-16, and of the child's right to appeal.

SAMPLE DIALOGUE: DISPOSITIONAL HEARING

COURT: The State of Indiana appears by _____, Deputy/Prosecuting Attorney)(Attorney for _____ County Office of Family and Children). The juvenile, _____, appears in person. The parent(s) (guardian) (custodian) appears in person. Also, (Intake Officer) _____, appears.

COURT: The delinquency petition comes on for a Dispositional Hearing.

COURT: This is Juvenile Case No. _____entitled "In The Matter Of _____, a juvenile alleged to be a delinquent child."

COURT: We are here today pursuant to a finding of delinquency by this court on the _____ day of _____, 19____.

COURT: The purpose of a dispositional hearing is to consider: 1) alternatives of the care, treatment or rehabilitation for the juvenile; 2) the necessity, nature and extent of the participation by a parent, guardian or custodian in a program of care, treatment or rehabilitation for the juvenile; and 3) the financial responsibility of the parent or guardian or the estate for any services provided for himself or the juvenile.

COURT: The Juvenile Probation Department having filed with the court its predispositional report, and the court having considered said report, the same is now admitted into evidence.

COURT: Do you feel there is anything your attorney has failed to do in representing you?
A:

COURT: Have you and your attorney received a copy of the predispositional report?
A:

COURT: Have you and your parents had an opportunity to read and examine the predispositional report and to go over the report with your attorney?
A:

COURT: Do you or your attorney have any statements to make concerning this report or any additions or corrections to be made to the report?
A:

COURT: Do you wish to file a written statement in regard to the disposition of your case?
A:

COURT: Do you have any evidence you wish to present that is relevant to you disposition?
A:

COURT: Do you have anything to say prior to disposition?
A:

COURT: Do the parents have anything to say prior to the disposition in this case?
A:

COURT: Does the attorney for the juvenile have anything to say prior to disposition?

A:

COURT: Does the prosecuting attorney or attorney for the county office of family and children have any recommendation or any information which he would like to offer prior to disposition?

A:

(If applicable, give Written Warning of Consequences For Violation Of Placement Order By Runaway or Truant at this time.) USE FORM D-11.10 or D-11.11.

COURT: (If appropriate) The local coordinating committee having filed its recommendation with the court, and the court having considered such recommendation, it is now admitted into evidence.

COURT: Juvenile, do you know of any legal reason why disposition should not be pronounced?

A:

NOTE: From this point on, several alternatives are available and the dispositional hearing procedure will vary accordingly. The following forms should be modified to reflect the appropriate dispositional alternative.

COURT: Now that disposition has been pronounced, there are several other matters which you should be aware of.

First, the terms of the disposition may be modified at any time on the court's own motion, motion of the prosecuting attorney/attorney for the office of family and children of public welfare, probation officer/caseworker, you or your parent, guardian or custodian.

Second, your case must be reviewed, at a full hearing, no later than eighteen (18) months from now. The State will then have the burden of proving that your supervision should continue. (If you are in placement, there must also be a review hearing no later than twelve (12) months from now [except for placement at the department of correction] [except for a placement for a repeat runaway or truant which is reviewed in three (3) months] [except for a placement for a repeat runaway or truant in a local secure public facility or in a local alternative facility approved by the juvenile court which placement may not exceed thirty (30) days], and the burden will be upon the state to show that you should not be returned home.)

Third, you have a right to appeal your disposition and adjudication as provided by law. See D-13.01.

Do you understand all of these matters?

A:

STATE OF INDIANA

COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

DISPOSITIONAL ORDER

Suspended Commitment/Supervision

The State of Indiana appears by _____,
 (Deputy/Prosecuting Attorney) (Attorney for _____ County Office of Family and
 Children). The child, _____, appears in person and with/without
 counsel, _____. The parent(s) (guardian) (custodian) appear in
 person. Also, (Intake Officer) _____ appears.

The delinquency petition comes on for a Dispositional Hearing.

The child having entered an admission of the delinquent act (having been found to have committed the delinquent act) alleged in the Petition filed herein, is now (or has heretofore been) adjudicated a delinquent. The Court, after reviewing the predispositional report (and recommendation of the local coordinating committee)(and hearing statements and evidence presented to the Court regarding the disposition of this case), and the Court having considered:

1. The interests of the child and the public;
2. The child's independently held assets and assets available to the child's parent(s);
3. The child's income;
4. The child's liabilities; and
5. The extent of the burden that payment of costs assessed under IC 33-9-11.5-6 would impose on said child, the child's parent(s) and their dependents;

The Court now awards wardship of _____, a juvenile, to the Indiana Department of Correction for housing in any correctional facility for children or any community-based correctional facility for children. Said commitment is suspended on the condition that _____, comply with the rules of supervision

(name of juvenile)

as attached hereto, said commitment and suspension being made for the following reasons (*Here include reasons for the disposition*):

(OPTIONAL)

[The Court now sets the ____ day of _____, 19 ____, at ____ M. as the date and time for hearing to determine whether the dispositional decree should be modified or at an earlier date if ordered by the Court.]

NOTE: The date for review of the disposition must be within twelve (12) months if a child has been removed from his parent, guardian or custodian. Whether the child was so removed or not, the Court must review the disposition for the purpose of determining whether its jurisdiction should continue within eighteen (18) months from the disposition decree. The secure detention of a repeat runaway or repeat truant must be reviewed every three (3) months.

(OPTIONAL)

The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide the notice required under IC 20-8.1-6.1-5.5.

(OPTIONAL)

A Parental Participation Petition having been filed with this Court and jurisdiction obtained upon _____ parents (Custodian or guardian) of _____, the Court after hearing evidence and being (name of juvenile) duly advised, now finds that the allegations contained in the Petition for Parental Participation are true and the parents (guardian or custodian) shall participate in a treatment program or pay for services as follows:

[Set forth specifically what the parents are to do and for what they are to be financially responsible.]

IT IS FURTHER ORDERED that:

☐ The Child;
☐ The Child's Parent(s), Guardian, Custodian: _____

- ☐ shall pay Court costs of \$120.00;
- ☐ shall pay an Initial probation user's fee of \$ ____; (not less than \$25.00 nor more than \$100.00);
- ☐ shall pay a Monthly supervision fee of \$ ____; (not less than \$5.00 nor more than \$15.00);

THE COURT FURTHER FINDS AND ORDERS that:

- ☐ The reasonable value of the legal services provided to the child in this case is: \$_____.
- ☐ _____ (Name of Parent(s), Guardian or Custodian) (Address) is reasonably able to pay for said services and shall pay the sum of \$_____, in payments of not less than \$ _____, per (week) (month).
- ☐ _____ (Name of Parent(s), Guardian or Custodian) (Address) is reasonably able to pay for said services and shall pay the sum of \$_____, in

payments of not less than \$ _____,
per (week) (month).
to the Clerk of Court, to be deposited by the Clerk in the {*Name of Agency/Fund
Account*}:_____.

[] The reasonable value of the _____ services provided for or
on behalf of the child in this case is \$_____.

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in
payments of not less than \$ _____,
per (week) (month).

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in
payments of not less than \$ _____, per (week) (month).
to the Clerk of Court, to be deposited by the Clerk in the {*Name of Agency/Fund
Account*}:_____.

So ORDERED this ____ day of _____, 19____.

Judge

NOTE: If the Court believes the dispositional alternative of restitution should be applied, the findings of fact in the dispositional decree should reflect such and a sentence added to the dispositional decree ordering the restitution and the amount.

D-11.05

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

DISPOSITIONAL ORDER

Supervision

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney) (Attorney for _____ County Office of Family and
Children). The child, _____, appears in person and with/without
counsel, _____. The parent(s) (guardian) (custodian) appear in
person. Also, (Intake Officer) _____ appears.

The delinquency petition comes on for a Dispositional Hearing.

The child, having entered an admission of the delinquent act (having been found to have committed the delinquent act), alleged in the Petition filed herein, is now (or has heretofore been) adjudicated a delinquent. The Court, after reviewing the predispositional report (and hearing statements and evidence presented to the Court regarding the disposition of this case), and the Court having considered:

1. The interests of the child and the public;
2. The child's independently held assets and assets available to the child's parent(s);
3. The child's income;
4. The child's liabilities; and
5. The extent of the burden that payment of costs assessed under IC 33-9-11.5-6 would impose on said child, the child's parent(s) and their dependents;

the Court now finds as follows [*Here include findings of fact pursuant to IC 31-6-4-15.3(h), which includes the needs of the child and need for participation by the parents.*]:

(OPTIONAL)

The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide the notice required under IC 20-8.1-6.1-5.5.

(OPTIONAL)

The Court now orders that _____ be confined to the _____ for _____ days.
(juvenile detention facility)

(OPTIONAL)

The Court now places _____ under the supervision of the _____
(name of juvenile)
County Probation Department, and order said child to comply with the rules of probation as attached hereto, for the following reasons (*Here include the reasons for the disposition*):

(OPTIONAL)

The Court now sets the ____ day of _____, 19____, at _____.M. as the date and time for hearing to determine whether or not the dispositional decree should be modified or at an earlier date if ordered by the Court.

NOTE: The date for review of the disposition must be within twelve (12) months if a child has been removed from his parents, guardian or custodian. Whether the child was so removed or not, the Court must review the disposition for the purpose of determining whether its jurisdiction should continue within eighteen (18) months from the dispositional decree. The secure detention of a repeat runaway or repeat truant must be reviewed every three (3)

months.

(OPTIONAL)

A Parental Participation Petition having been filed with this Court and jurisdiction obtained upon _____ parents (custodian or guardian) of _____, the Court after hearing evidence and being (name of juvenile)

duly advised, now finds that the allegations contained in the Petition for Parental Participation are true and that the parents (guardian or custodian) shall participate in a treatment program or pay for services as follows (*Set forth specifically what the parents are to do and for what they are to be financially responsible*):

IT IS FURTHER ORDERED that:

☐ The Child;
☐ The Child's Parent(s), Guardian, Custodian: _____

- ☐ shall pay Court costs of \$120.00;
- ☐ shall pay an Initial probation user's fee of \$ ____; (not less than \$25.00 nor more than \$100.00);
- ☐ shall pay a Monthly supervision fee of \$ ____; (not less than \$5.00 nor more than \$15.00);

THE COURT FURTHER FINDS AND ORDERS that:

- ☐ The reasonable value of the legal services provided to the child in this case is: \$ ____.
- ☐ _____ (Name of Parent(s), Guardian or Custodian) _____ (Address) is reasonably able to pay for said services and shall pay the sum of \$ _____, in payments of not less than \$ _____, per (week) (month).
- ☐ _____ (Name of Parent(s), Guardian or Custodian) _____ (Address) is reasonably able to pay for said services and shall pay the sum of \$ _____, in payments of not less than \$ _____, per (week) (month).
to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund Account}: _____.
- ☐ The reasonable value of the _____ services provided for or on behalf of the child in this case is \$ ____.
- ☐ _____ (Name of Parent(s), Guardian or Custodian) _____ (Address) is reasonably able to pay for said services and shall pay the sum of \$ _____, in payments of not less than \$ _____, per (week) (month).
- ☐ _____ (Name of Parent(s), Guardian or Custodian) _____ (Address)

is reasonably able to pay for said services and shall pay the sum of \$_____, in payments of not less than \$ _____, per (week) (month).
to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund Account}:_____.

So ORDERED this ____ day of _____, 19____.

Judge

NOTE: If the Court believes the dispositional alternative of restitution should be applied, the findings of fact in the dispositional decree should reflect such and a sentence added to the dispositional decree ordering the restitution and the amount.

D-11.06

STATE OF INDIANA

COURT

In The Matter Of _____

_____ Case No. _____

A Child Alleged to be a Delinquent Child

CONDITIONS OF SUPERVISION

Sample

You have been placed on supervision because the Court believes you can, with the help of your Probation Officer, stay out of trouble. Supervision is for those who are willing and able to be helped and who can be trusted to make a real effort to help themselves. It is for the young person who cooperates and who is honest and sincere.

As part of your responsibility in the supervision plan, the Court is requiring you to carry out certain rules which the Court feels will be helpful to you. Your regulations during the time you are on supervision will be as follows:

1. You are to obey all town, city, county, state and federal laws and ordinances, and you shall be guilty of no acts of bad conduct of any kind or character;
2. You shall report to the Probation Department at such times and places as shall be directed by such Probation Department. Any change of address, school or employment must be promptly reported to the Probation Department;
3. You are to participate in programs and activities specifically assigned and outlined as part of your supervision program. (Here outline the programs and activities);

-
-
-
4. You are to have the permission of your parents for any activities which required you to be away from your home;
 5. You are to obey your parents at all times;
 6. You are to be in the confines of your home by _____ P.M., unless you are in the presence of one or both of your parents or in the presence of a responsible persons with the prior approval of your parents or the Probation Officer;
 7. You are to be very careful as to the people with whom you associate, and you shall not associate with any persons who are in any sort of trouble with the law. You shall not attend places of ill repute;
 8. You are to attend school regularly with no absence of tardiness of an unexcused nature, and you shall diligently apply yourself to your school work and conduct yourself according to school policy. If you are out of school, you are to find suitable employment with reasonable hours;
 9. You are to make restitution in the amount of \$_____ to _____, payable as follows:_____;
 10. You are to pay costs in the amount of \$_____;
 11. You are to pay an initial probation user's fee of \$_____ and monthly supervision fee of \$_____; and
 12. Special Terms:

You are entitled to have a formal hearing by the end of the expiration of eighteen (18) months, or earlier if justifiable reasons exist, to determine whether your rules of conduct herein should continue, be discontinued, or be modified. Remember that the Court and its Probation Department are at all times ready to assist you in any way possible. Feel free to come to us at any time.

Dated: _____

(Judge)(Magistrate)(Referee)

I have read the above Order of Supervision and had it explained to me. I agree to abide with the terms therein. I understand that failure to obey these rules will be noted, that this fact will be recorded, and that my supervision may be revoked or my suspended sentence imposed.

Probationer

The undersigned, being the parents, guardian or custodian of the child under supervision, hereby consent(s) to the above Order of Supervision. We further agree to participate fully in any supervision program and shall keep the Probation Department informed of the child's progress and any problems or violations which occur.

Parent, Guardian or Custodian

Parent, Guardian or Custodian

I have on the ____ day of _____, 19____, read, explained and delivered a copy of the above Order of Supervision to the juvenile and the juvenile's parents, guardian or custodian.

Probation Officer

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

DISPOSITIONAL ORDER
Wardship for Purposes of Placement

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney) (Attorney for _____ County Office of Family and
Children). The child, _____, appears in person and with/without
counsel, _____. The parent(s) (guardian) (custodian) appear in
person. Also, (Intake Officer) _____ appears.

The delinquency petition comes on for a Dispositional Hearing.

The juvenile having entered an admission of the delinquent act (having been found to have committed the delinquent act) alleged in the Petition filed herein, is now (or has heretofore been) adjudicated a delinquent. The Court, after reviewing the predispositional report (and recommendation of the local coordinating committee)(and hearing statements and evidence presented to the Court regarding the disposition of the case), and the Court having considered:

1. The interests of the child and the public;
2. The child's independently held assets and assets available to the child's parent(s);
3. The child's income;
4. The child's liabilities; and
5. The extent of the burden that payment of costs assessed under IC 33-9-11.5-6 would impose on said child, the child's parent's and their dependents;

the Court now finds as follows *[Here include findings of fact and reasons pursuant to IC 31-6-4-15.3(h) including findings as to the home or place where the child should be placed or granted wardship and including the reason for the disposition.]*:

The legal settlement of the child is _____. The
_____ County Office of Family and Children shall provide the notice required
under IC 20-8.1-6.1-5.5.

IT IS ORDERED, ADJUDGED AND DECREED that:

[] The Child, _____ is now made a ward of _____.
(name of juvenile)

The _____ County Office of Family and Children is authorized to expend necessary funds for the care of said juvenile, said determination being made for the following reasons:

[] The Child, _____ is now made a ward of _____.
(name of juvenile)

The Child is removed from the child's present home and placed in the following home or shelter care facility: _____

pursuant to provisions of IC 31-6-4-15.4. Said home or shelter care facility is authorized to control and discipline said child.

The _____ County Office of Family and Children is authorized to expend necessary funds for the care of said juvenile, said determination being made for the following reasons:

[] The Court now gives said child a written warning of the consequences of a violation of the placement made in this order which written warning as given by the court to said child is now filed and made a part of the record herein.

[] A Parental Participation Petition having been filed with this Court and jurisdiction obtained upon _____ parents (custodian or guardian) of the Child, the Court after hearing evidence and being duly advised now finds that the allegations contained in the Petition for Parental Participation are true and that the parents (guardian or custodian) shall participate in a treatment program or pay for services as follows (*Set forth specifically what the parents are to do and for what they are to be financially responsible*):

IT IS FURTHER ORDERED that:

[] The Child;

[] The Child's Parent(s), Guardian, Custodian: _____

[] shall pay Court costs of \$120.00;

[] shall pay an Initial probation user's fee of \$ _____; (not less than \$25.00 nor more than \$100.00);

[] shall pay a Monthly supervision fee of \$ _____; (not less than \$5.00 nor more than \$15.00);

THE COURT FURTHER FINDS AND ORDERS that:

[] The reasonable value of the legal services provided to the child in this case is:
\$ _____.

[] _____ (Address)
(Name of Parent(s), Guardian or Custodian)
is reasonably able to pay for said services and shall pay the sum of \$ _____, in payments of not less than \$ _____, per (week) (month).

[] _____ (Address)
(Name of Parent(s), Guardian or Custodian)
is reasonably able to pay for said services and shall pay the sum of \$ _____, in payments of not less than \$ _____, per (week) (month).

to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund

Account}:_____.

[] The reasonable value of the _____ services provided for or on behalf of the child in this case is \$_____.

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in
payments of not less than \$ _____,
per (week) (month).

[] _____
(Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in
payments of not less than \$ _____, per (week) (month).

to the Clerk of Court, to be deposited by the Clerk in the {*Name of Agency/Fund*
Account}:_____.

So ORDERED this ____ day of _____, 19____.

Judge

NOTE: The Benchbook Committee recommends that a review date be set at this time.

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child.

Date of Birth: _____.

DISPOSITIONAL ORDER

Wardship Awarded to Department of Correction

The State of Indiana appears by _____,
 (Deputy/Prosecuting Attorney) (Attorney for _____ County Office of Family and
 Children). The child, _____, appears in person and with/without
 counsel, _____. The parent(s) (guardian) (custodian) appear in
 person. Also, (Intake Officer) _____ appears.

The delinquency petition comes on for a dispositional hearing.

The juvenile [having admitted the delinquent act(s)] [having been found to have committed the
 delinquent act(s)] alleged in the petition filed herein, the Court now finds that the child did commit (a)
 (the) delinquent act(s), as follows (*State offenses and class of felony/misdemeanor*):

[] The Court reviewed the recommendation of the local coordinating committee,

The Court reviewed the predispositional report and having heard evidence and statements presented to the
 Court concerning the disposition of this cause for action, the Court, pursuant to Ind. Code § 31-6-4-
 15.3(h), and the Court having considered the interests of the child and the public makes the following
 findings of fact:

The Child has a prior history of delinquent adjudications in the following case numbers:

[] {*For Determinate Sentencing only*} The child was at least fourteen (14) years of age at the time of
 the delinquent act and has two (2) prior unrelated felony adjudications.

[] {*For Determinate Sentencing only*} The child was at least thirteen (13) years of age and less than
 sixteen (16) years of age at the time the delinquent act was committed.

Reasonable efforts (were) (were not) made to (prevent the child's removal from) (or) (to reunite the child
 with) the child's parent, guardian, or custodian.

The legal settlement of the child is _____. The

_____ County Office of Family and Children shall provide the notice required under IC 20-8.1-6.1-5.5.

- ☐ Pursuant to (IC 31-6-4-15.9(a)(1)) (IC 31-6-7-16(d)), the Court now awards wardship of the child to the Indiana Department of Correction for housing in any correctional facility for children.
- ☐ {For Determinate Sentencing Only} Pursuant to (IC 31-6-4-15.9(b)(8)) (IC 31-6-4-15.9(n)), the Court now awards wardship of the child to the Indiana Department of Correction for housing in any correctional facility for children for a fixed period of _____.
- ☐ The child is a female and is not known to the Court to be pregnant.

The child (does) (does not) have any pending charges known to the Court at this time: _____
_____.

The Court recommends that the Department of Correction [*add placement, treatment, length of stay recommendations*]:

- ☐ Pursuant to IC 5-2-12-4(2) [SEX OFFENDER REGISTRY (*If applicable*)], the child is at least fourteen (14) years of age who has committed a sex offense under IC 5-2-12-4(1), and the Court now finds by clear and convincing evidence that the child is likely to repeat an act that would be an offense under IC 5-2-12-4 if committed by an adult.

The Court's dispositional order is entered for the following reasons:

The [clerk] [sheriff] [probation officer] is hereby ordered to transmit this dispositional order, a copy of the delinquency petition, a copy of the predispositional report, and a summary of the Court's information concerning the child to the Indiana Department of Correction.

The Sheriff of _____ County shall execute this order by transporting the child to _____.

IT IS FURTHER ORDERED that:

- ☐ The Child;
☐ The Child's Parent(s), Guardian, Custodian: _____

- ☐ shall pay Court costs of \$120.00;
☐ shall pay an Initial probation user's fee of \$ ____; (not less than \$25.00 nor more than \$100.00);
☐ shall pay a Monthly supervision fee of \$ ____; (not less than \$5.00 nor more than \$15.00);

THE COURT FURTHER FINDS AND ORDERS that:

☐ The reasonable value of the legal services provided to the child in this case is:

\$_____.

☐ _____ (Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in payments
of not less than \$ _____,
per (week) (month).

☐ _____ (Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in
payments of not less than \$ _____,
per (week) (month).

to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund
Account}:_____.

☐ The reasonable value of the _____ services provided for or
on behalf of the child in this case is \$_____.

☐ _____ (Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in
payments of not less than \$ _____,
per (week) (month).

☐ _____ (Name of Parent(s), Guardian or Custodian) (Address)
is reasonably able to pay for said services and shall pay the sum of \$_____, in
payments of not less than \$ _____, per (week) (month).

to the Clerk of Court, to be deposited by the Clerk in the {Name of Agency/Fund
Account}:_____.

So ORDERED this ____ day of _____, 19__.

Judge

State of Indiana

County of _____

I, _____, Clerk of said County, do hereby certify that _____
_____, whose genuine signature is appended to the foregoing
Dispositional Order, was, at the date thereof, and is Judge of the Court having juvenile jurisdiction in
this county. IN WITNESS whereof, I have hereunto set my hand and affixed the seal of said Court at
_____, Indiana, this ____ day of
_____, 19 ____.

Clerk _____

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER TO REINSTATE JURISDICTION OVER CHILD FOR UNPAID RESTITUTION

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney) (Attorney for _____ County Office of Family and
Children). The child, _____, appears in person and with/without
counsel, _____. The parent(s) (guardian) (custodian) appear in
person. Also, (Intake Officer) _____ appears.

The juvenile, having been released from the department of correction, this court hereby reinstates
jurisdiction over the child named above in accordance with Ind. Code 31-6-2-3.

The juvenile was ordered to pay restitution of \$_____, and \$_____ remains unpaid at this
time. The Court now places the juvenile under the supervision of the probation department until the
restitution order is satisfied.

So ORDERED this ____ day of _____, 19____.

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**WRITTEN WARNING OF CONSEQUENCES FOR VIOLATION
OF PLACEMENT ORDER BY RUNAWAY**

You are now advised that if you violate the Dispositional Order for this court placing you at _____, the juvenile court may modify its
(name of facility)
dispositional order if the following conditions are met:

- (1) You were placed in a shelter care facility or other place of residence as part of a court order with respect to a delinquent act under IC 31-6-4-1(a)(2) [runaway];
- (2) You received a written warning of the consequences of a violation of the placement at the hearing during which the placement was ordered;
- (3) The issuance of the warning was reflected in the records of the hearing;
- (4) You have not been held in a juvenile detention facility for more than twenty-four (24) hours (excluding Saturdays, Sundays, and holidays) before the hearing at which it is determined that you violated the part of the order concerning your placement in a shelter care facility or other place of residence; and
- (5) The court determines your mental and physical condition may be endangered if you are not placed in a secure facility.

The court further advises you that the court may modify its dispositional order if the foregoing conditions are met and place you:

- (1) In a nonlocal secure private facility;
- (2) In a local secure private facility;
- (3) In a local secure public facility;
- (4) In a local alternative facility approved by the juvenile court; or
- (5) As a ward of the department of correction.

This written notice has been served upon _____
(name of juvenile)
on _____, 19____, in open court.

Judge

ACKNOWLEDGEMENT OF RECEIPT OF WARNING

I, the undersigned, now acknowledge that I am the person designated in the warning as being ordered into placement, that I have read and fully understand the warning, that I have been given a copy of the

warning, and that I have placed my signature below.

Witness:

Attorney

(Signature of juvenile)

Parent

Other

STATE OF INDIANA

COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**WRITTEN WARNING OF CONSEQUENCES FOR VIOLATION
OF COMPULSORY SCHOOL ATTENDANCE LAW**

TO: _____

You are now advised that if you violate the dispositional order of this Court which requires you to comply with the compulsory school attendance law (IC 20-8.1-3), the juvenile court may modify its dispositional order if the following conditions are met:

- (1) You fail to comply with the compulsory school attendance law (IC 20-8.1-3) as part of a court order with respect to a delinquent act under IC 31-6-4-1(a)(3);
- (2) You received a written warning of the consequences of a violation of the court order;
- (3) The issuance of a warning was reflected in the records of the hearing;
- (4) You have not been held in a juvenile detention facility for more than twenty-four (24) hours (excluding Saturdays, Sundays and holidays) before the hearing at which it is determined that you violated that part of the order concerning your school attendance; and
- (5) The court determines your mental and physical condition may be endangered if you are not placed in a secure facility.

The Court further advises you that the court may modify its dispositional order if the foregoing conditions are met and place you:

- (1) In a nonlocal secure private facility;
- (2) In a local secure private facility;
- (3) In a local secure public facility;
- (4) In a local alternative facility approved by the juvenile court; or
- (5) As a ward of the department of correction.

This written notice has been served upon _____ on
 _____, 19____, in open court. (name of juvenile)

 Judge

ACKNOWLEDGEMENT OF RECEIPT OF WARNING

I, the undersigned, now acknowledge that I am the person designated in the warning as being ordered into placement, that I have read and fully understand the warning, that I have been given a copy of the

warning, and that I have placed my signature below.

Witness:

Attorney

(Signature of juvenile)

Parent

Other

Code Conversion Table

CHAPTER 12: Court Orders to Parents		
Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
1	31-6-4-15.8	31-37-19-24
1	31-6-4-17	31-37-15-1 <i>et seq.</i>
1	31-6-7-14	31-32-13-1 <i>et seq.</i>
1	31-6-4-18(d)	31-40-1-4
1	31-6-5-6(b)	31-35-6-4(b)
1	31-6-4-18(e) & (f)	31-40-1-3(b) & (c)
1	31-6-7-2	31-32-4-4
1	31-6-4-18	31-40-1-1 <i>et seq.</i>
2	31-6-9-6	31-31-2-1 <i>et seq.</i>
2	31-6-4-12	31-37-9-9
2	31-6-4-18	31-40-2-1
2	31-6-3-4	31-32-3-9
2	31-6-4-18(i)	31-40
2	31-6-11-9	31-33-15-3
2	31-6-4-15.7(b)(1)	31-37-19-27
2	31-6-11-19	31-33-21-1
2	31-6-4-15.4(2)	31-37
2	31-6-4-15.4(3)	31-40-1-5
2	31-6-4-18(g)	31-40-4-1
2	31-6-4-18	31-40
2	31-6-2-3	31-30-2-1(c)
2	31-6-7-15	31-32-14-1
3	31-6-4-15(b)	31-37-17-2(a)
3	31-6-4-17	31-37-15-1 <i>et seq.</i>
3	31-6-4-13(f)	31-37-12-6
3	31-6-4-15.8	31-37-19-24

3	31-6-4-17(c)	31-37-16-3
3	31-6-7-14	31-32-13-8
CHAPTER 12: Court Orders to Parents		
Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
3	31-6-7-14	31-32-13-3
4	31-6-10	31-37-23-1 <i>et seq.</i>
4	31-6-4-18(e) & (f)	31-40-1-3(b) & (c)
4	31-6-4-15(c)	31-37-17-3
4	31-6-4-18	31-40
4	31-6-2-3	31-30-2-1(c)
9	31-6-4-17	31-37-16-3

SCOPE NOTE

Court Orders to Parents

Parental participation in a program of care, treatment or rehabilitation of the child:

IC 31-6-4-15.8

IC 31-6-4-17

Injunctions and temporary restraining orders:

IC 31-6-7-14

If an emergency exists, a juvenile court may issue an injunction. **Matter of Lemond**, 413 N.E.2d 228 (Ind. 1980).

"...the juvenile court here did have jurisdiction to authorize the sterilization of P.S. since it had before it clear and convincing evidence that medical procedure was in the best interest of the child." **P.S. v. W.S.**, 452 N.E.2d 969 at 976 (Ind. 1983).

Expenses which a parent or guardian of the estate shall be ordered to pay are as follows:

The parent or guardian of the estate of any child returned to Indiana under the interstate compact shall reimburse the court for all costs regardless of whether the child has been adjudged delinquent. IC 31-6-4-18(d).

Support which accrued prior to termination of parental rights shall be paid in accord with the juvenile Court's order. IC 31-6-5-6(b).

Each parent of a child shall be ordered to pay for services provided to the child with reference to the child support guidelines adopted by the Indiana Supreme Court. IC 31-6-4-18(e) & (f).

Exception: If the court finds that the parents/guardians are unable to pay, or justice would not be served by ordering payment, the order of reimbursement need not be issued.

Expenses which a parent or guardian of the estate may be ordered to pay are as follows:

Attorney fees: IC 31-6-7-2; IC 31-6-4-18.

Foster parents are not entitled to attorney fees in the absence of a statute.

In Re Wardship of Turrin, 436 N.E.2d 130 (Ind. App. 1982).

"If the juvenile court determines that the child is without an attorney and the child has not waived counsel, the court must appoint counsel to represent the child." **Adams v. State**, 411 N.E.2d 160 at 162 (Ind. App. 1980).

Docket fees:

IC 31-6-9-6

Probation User's fee:

IC 31-6-4-12; IC 31-6-4-18

Guardian ad litem or court appointed special advocate fees:
IC 31-6-3-4; IC 31-6-4-18(i); IC 31-6-11-9

Parental support for partially emancipated child:
IC 31-6-4-15.7(b)(1)

Services for abused children:
IC 31-6-11-19

Outpatient social, psychological, psychiatric, medical or educational care:
IC 31-6-4-15.4(2)

Care, including support, provided in an institution or foster care:
IC 31-6-4-15.4(3)

If the parent or guardian of the estate defaults in reimbursing county, or fails to pay any fee authorized by this article, the juvenile court may find the parent in contempt and may enter judgment for the amount due. IC 31-6-4-18(g)

The Court's jurisdiction over the parents continues until the parents' financial obligation imposed under IC 31-6-4-18 has been satisfied. IC 31-6-2-3

Enforcement of orders to parent is through the contempt power of the court. IC 31-6-7-15; IC 34-4-7-10.

Liability of parents for acts of children: IC 34-4-31-1. A parent is liable for up to \$3,000.00 in actual damages, and is liable for actual damages resulting from gang activity.

PROCEDURE
Court Orders to Parents and Others

I. Parental participation in a program of care, treatment or rehabilitation.

- A. After adjudication, the intake officer shall consider the necessity, nature and extent of parental participation pursuant to IC 31-6-4-15(b).
- B. The prosecutor, attorney for the county office of family and children, probation officer, or caseworker may sign and file a petition for parental participation under IC 31-6-4-17.
- C. Notice of parental participation must have been given at the initial hearing pursuant to IC 31-6-4-13(f).
- D. The court's order must specify reasons for such parental participation in accordance with IC 31-6-4-15.8.
USE FORM D-12.03
USE FORM D-12.04
USE FORM D-12.05
USE FORM D-12.06

II. Protective Orders

- A. A petition may be filed to order a person to refrain from contact with a child. It must be entitled, "In the Matter of a Protective Order for _____."
- B. The petition must allege the elements in IC 31-6-4-17(c), concerning contact by a particular person with the adjudicated CHINS or delinquent.
USE FORM D-12.07

III. Injunctions.

- A. A temporary restraining order issued without notice is valid for up to seventy-two (72) hours in accordance with T.R. 65 and IC 31-6-7-14.
- B. After notice, a hearing on a preliminary injunction must be held pursuant to T.R. 65 and IC 31-6-7-14.

IV. Expenses which a parent or guardian of the estate must pay.

- A. The parent or guardian of the estate of any child returned to Indiana under the interstate compact for juveniles (IC 31-6-10) shall reimburse the county for all costs involved in returning the child regardless of whether the child has been adjudicated delinquent.
- B. Upon terminating parental rights, any support obligations that accrued before termination are not affected except that the support payments shall be made under the juvenile court's order.
- C. Each parent of a child shall be ordered to pay for services provided to the child with reference

to the child support guidelines adopted by the Indiana Supreme Court. IC 31-6-4-18(e) & (f).

Exception: If the court finds that the parents/guardians are unable to pay, or justice would not be served by ordering payment, the order of reimbursement need not be issued.

V. Expenses which a parent or guardian of the estate may be ordered to pay:

An intake officer shall prepare a financial report on the parent or the estate of the child to assist the court in determining financial responsibility. See IC 31-6-4-15(c).

VI. Termination of reimbursement jurisdiction.

The Court's jurisdiction over the parents continues until the parents' financial obligation imposed under IC 31-6-4-18 has been satisfied. IC 31-6-2-3.

VII. Enforcement of reimbursement orders.

Enforcement of orders to parent is through contempt power of court and by entry of judgment and proceedings supplemental. See discussion in D-11.01.

STATE OF INDIANA

COURT

In The Matter of the Participation of:

the Parent, Guardian or Custodian of:

Case No. _____

PETITION FOR PARENTAL PARTICIPATION

_____, (Deputy/Prosecuting Attorney, Attorney for County Office of Family and Children, Probation Officer, Department of Correction or Caseworker), being duly sworn upon his oath, states that:

1. the respondent is the child's parent, guardian or custodian;
2. the child has been adjudicated a delinquent;
3. the parent, guardian or custodian should:
 - (a) obtain assistance in fulfilling his obligation as a parent, guardian or custodian;
 - (b) provide specified care, treatment or supervision for the child; or
 - (c) work with any person providing care, treatment or rehabilitation for the child.
 - (d) *{Other specific requests}*: _____

WHEREFORE, it is respectfully requested that the Court set a hearing to require parental participation pursuant to this petition and for all other just relief, right and proper in the premises.

I affirm, under the penalties for perjury, that the foregoing representations are true to the best of my knowledge and belief.

Date: _____

Petitioner

STATE OF INDIANA

COURT

In The Matter of the Participation of:

the Parent, Guardian or Custodian of:

Case No. _____

ORDER OF PARTICIPATION

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney)(Attorney for County Office of Family and Children). The parent(s)
(guardian) (custodian), _____, appear in person. Also, (Intake
Officer) _____, appears.

The Petition for Parental Participation comes on for hearing. The juvenile having been adjudicated a
delinquent child, the parents/guardian/custodian having been notified of this hearing, and evidence
having been heard, the Court now finds *[Here include findings of fact for parental participation]*:

The Court now orders _____, the
parents/guardian/custodian of the juvenile, to _____

So ORDERED this ____ day of _____, 19____.

Judge

STATE OF INDIANA

COURT

IN THE MATTER OF:

Case No. _____

A Child Alleged to be a Delinquent Child.

VERIFIED INFORMATION FOR RULE TO SHOW CAUSE

The undersigned _____, a _____
(name)

_____ affirms under the pains and penalties of
(official capacity)
perjury that the following is true and correct to the best of the Petitioner's knowledge, information and belief,
to-wit:

(1) That on the ____ day of _____, 19____, this cause, ordered that
_____ do the following:
(name)

(2) That _____ has failed to comply with said order
(name)
in that: _____

(3) That _____ has no legal
(name)
excuse or justification for failing to comply with said order.

(4) That an Order to Show Cause should be issued against _____
(name)
_____, commanding him/her to appear and show cause,
if any he/she may have, why he/she should not be held in contempt of Court.

So AFFIRMED this ____ day of _____, 19_____.

(Petitioner)

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER TO SHOW CAUSE

For: The Sheriff of _____ County

To : _____
(name)

(address)

You are ORDERED to appear before this Court on the ____ day of _____, 19____, at _____ o'clock _____.M. to then and there show cause, if any you may have, why you should not be held in contempt of Court for failing to comply with the orders of Court entered the ____ day of _____, 19____. In the event you should fail to appear, attachment may issue for your person, and you may be taken into custody by law enforcement officers and brought before this Court at its earliest convenience.

So ORDERED this ____ day of _____, 19____.

Judge

STATE OF INDIANA

COURT

In The Matter of _____

Case No. _____
A Child Alleged To Be A Delinquent Child**IN THE MATTER OF A PROTECTIVE ORDER FOR:**_____
(Under IC 31-6-4-17)_____, (Deputy/Prosecuting Attorney, GAL/CASA, Attorney for
County Office of Family and Children, Probation Officer, Department of Correction, Caseworker,) being duly sworn upon his/her oath, states that:

1. The respondent _____, is likely to have direct or indirect contact with _____ (the child), in the absence of an order under IC 31-6-4-17;
2. The child has been adjudicated a delinquent child or a child in need of services; and
3. The best interests of the child will be served if the person refrains from direct or indirect contact with the child.

WHEREFORE, it is respectfully requested that the court set a hearing to require that respondent refrain from contact with the child in accordance with this petition and for all other relief, right and proper in the premises.

I affirm, under the penalties for perjury, that the foregoing representations are true to the best of my knowledge and belief.

Date: _____

Petitioner

Code Conversion Table

[illegible]

SCOPE NOTE
Appeals

Appeals may be taken as provided by law.
IC 31-6-7-17 and IC 31-6-7-1(a).

A juvenile adjudicated a delinquent does not have a right to a stay of execution or bail pending appeal.
IC 31-6-4-5.
In Re Pisello, 293 N.E.2d 228 (Ind. App. 1973).
In Re Ort, 407 N.E.2d 1162 at 1164 (Ind. App. 1980).

An order granting waiver of juvenile jurisdiction is appealable, but there is no right to an immediate appeal.
An appeal from a waiver order, valid upon its face, must abate pending final determination of criminal prosecution authorized by the waiver.
Snellgrove v. Porter Circuit Court, 386 N.E.2d 680 at 681 (Ind. 1979).

However, there is authority that the juvenile may petition for an interlocutory appeal pursuant to Ind. Appellate Rule 4(B)(6), to obtain a review of the waiver order.
In Re Tacy, 427 N.E.2d 919 (Ind. App. 1981).
Soward v. State, 606 N.E.2d 885 (Ind. App. 1993).

A juvenile in a delinquency case may file an appeal or file a motion to correct error. The dispositional decree is analogous to a sentencing in a criminal case.
N.J.R. v. State, 439 N.E.2d 725 (Ind. App. 1982);
See also **In the Matter of M.R., W.D., and C.J.**, 452 N.E.2d 1085 (Ind. App. 1983).

Postconviction relief remedies do not apply to juveniles.
Jordan v. State, 512 N.E.2d 407 (Ind. 1987), *reh. denied*, 516 N.E.2d 1054.

A Ind. Trial Rule 60(B) motion is available to challenge an adjudication of delinquency or to challenge the rehabilitative action ordered.
D.D.J. v. State, 640 N.E.2d 768 (Ind. App. 1995).
C.B. v. State, 553 N.E.2d 488 (Ind. App. 1990).

Code Conversion Table

CHAPTER 14: Modification/Probation Violation		
Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
1	31-6-7-16(a) and (b)	31-34-23
1	31-6-2-3	31-30-2-1, 4 and 5
1	31-6-4-15	31-37-17 31-37-21-1(c)
2	31-6-4-5(e)	31-37-5-3 and 5
2	31-6-4-15.3(b)	31-37-18-2
2	31-6-4-15	31-37-17
2	31-6-14-12	31-38-2-8
2	31-6-4-18	31-40-1-2(c) 31-40-1-3(a) 31-40-1-4 31-40-1-5
2	31-6-4-18	31-40-1
2	31-6-4-15	31-37-17
2	31-6-7-16	31-37-22-4
2	31-6-7-16(c),(d) and (f)	31-37-22-5 31-37-22-6 31-37-22-7
2	31-6-4-19(a)	31-37-20-1
2	31-6-7-16	31-37-22
3	31-6-4-19(h)	31-37-20-2
3	31-6-4-19(i)	31-37-20-3
3	subsections (b), (c), (h) and (i)	31-37-20-2 31-37-20-3
4	section 15	31-37-17
4	31-6-4-19(d)	31-37-20-4
4	31-6-4-19	31-37-20
4	31-6-8-1(j)	31-39-7-1
4	31-6-8-1.2(i)	31-39-7-2

4	31-6-2-3(d)	31-30-2-4
CHAPTER 14: Modification/Probation Violation		
Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
4	31-6-4-18.5	31-37-19-26 31-37-20-6
5	31-6-2-3	31-30-2-1(b) 31-30-2-3 31-30-2-4 31-30-2-5
6	31-6-4-19(h)	31-37-20-2
7	31-6-4-19(h)	31-37-20-2(b)
7	31-6-4-19(i)	31-37-20-3
7	31-6-4-19(i) 2 nd cite	31-37-20-3(b)
8	31-6-8-1(k)	31-39-7-1
8	31-6-8-1.2(i)	31-39-7-2
9	31-6-7-16(a)	31-37-22-1
15	31-6-4-19(h)	31-37-20-2
17	31-6-4-19(i)	31-37-20-3

SCOPE NOTE

MODIFICATION/PROBATION VIOLATION

Statutory authority and procedure for modification:

IC 31-6-7-16(a) and (b):

While the juvenile court retains jurisdiction under IC 31-6-2-3, it may modify any dispositional decree.

If the petitioner requests an emergency change in the child's residence, the court may issue a temporary order. However, the court shall then give notice to those persons affected and shall hold a hearing on the question if requested. If the petitioner requests any other modification, the court shall give notice to those persons affected and may hold a hearing on the questions. If a hearing is required, IC 31-6-4-15 governs the preparation and use of a modification report. This report shall be prepared if the state or any person other than the child or his parent, guardian, guardian ad litem, or custodian is requesting the modification.

Any change in a dispositional decree, including change in probation or revocation of probation, is a modification of disposition and the modification procedure must be followed.

Matter of L.J.M., 473 N.E.2d 637 (Ind. App. 1985).

Unlike courts in criminal cases, the juvenile court is not required to suspend a sentence as a prerequisite to imposing probation and with or without probation, the court as long as it retains juvenile jurisdiction may modify its dispositional decree at any time.

Matter of L.J.M., 473 N.E.2d 637, 639 fn 1 (Ind. App. 1985).

Notice:

The modification statute which includes the requirement of notice, must be strictly followed.

Matter of L.J.M., 473 N.E.2d 637, 640 (Ind. App. 1985).

S.L.B. v. State, 434 N.E.2d 155 (Ind. App. 1982) holding that written notice specifically setting forth the grounds relied upon for modification is not required.

Emergency change in detention or custody:

No change in detention or custody should be ordered, without notice, upon filing of a modification or probation violation petition unless the petition alleges an emergency. In deciding whether to issue a temporary order, without notice, for emergency detention or custody, the court may consider the criteria for detention normally considered in the detention hearing under IC 31-6-4-5(e). **Matter of L.J.M.**, 473 N.E.2d 637, 640 (Ind. App. 1985).

Evidence & Hearing:

Admissibility of modification report:

IC 31-6-4-15.3(b), IC 31-6-4-15.

Recommendation of local coordinating committee, if requested, shall be considered.

IC 31-6-14-12.

Hearsay evidence is admissible in a dispositional hearing. **Matter of L.J.M.**, 473 N.E.2d 637, 643 (Ind. App. 1985).

Financial responsibility of parents:
IC 31-6-4-18:

The statute governing the financial responsibility of parents for services is IC 31-6-4-18, which contemplates a hearing. The burden of proof is by preponderance of the evidence.

L.J.F. v. Lake County Department of Public Welfare, 484 N.E.2d 40 (Ind. App. 1985).

Information required to be in a report for modification hearing:
IC 31-6-4-15, incorporated by reference in IC 31-6-7-16.

Modification in cases of repeat runaways and school truants who have departed from a shelter care facility or place of residence after receiving written warning of consequences so as to place in secure public or private facility.
IC 31-6-7-16(c), (d), and (f).

Progress Reports:

IC 31-6-4-19(a):

At any time after the date of the original dispositional decree, the juvenile court may order the County Office of Family and Children or the probation department to file a report on the progress made in implementing the decree. If, after reviewing the report, the juvenile court wishes to consider modification of the dispositional decree, it shall proceed under IC 31-6-7-16.

MANDATORY REVIEW

Twelve (12) month review:
IC 31-6-4-19(h):

Every twelve (12) months after the date of the original dispositional decree or every twelve (12) months after a delinquent child was removed from his parent, guardian, or custodian, whichever comes first, or more often if ordered by the juvenile court, the court shall hold a formal hearing. The court shall determine whether the dispositional decree should be modified and whether the present placement is in the best interest of the child. The court in making its determination, may consider the following:

- (1) The services that have been provided or offered to a parent, guardian or custodian to facilitate a reunion.
- (2) The extent to which the parent, guardian, or custodian has enhanced the ability to fulfill parental obligations.
- (3) The extent to which the parent, guardian, or custodian has visited the child, including the reasons for infrequent visitation.
- (4) The extent to which the parent, guardian, or custodian has cooperated with the probation department.
- (5) The child's recovery from any injuries suffered before removal.
- (6) Whether any additional service are required for the child or his parent, guardian, or custodian and, if so, the nature of those services.

- (7) The extent to which the child has been rehabilitated.

Eighteen (18) month review:

IC 31-6-4-19(i):

Every eighteen (18) months after the date of the original dispositional decree or every eighteen (18) months after a delinquent child was removed from the child's parent, guardian, or custodian, whichever comes first, or more often if ordered by the juvenile court, the court shall hold a formal hearing on the question of continued jurisdiction. The state must show that jurisdiction should continue by proving that the objectives of the dispositional decree have not been accomplished and that a continuation of the decree with or without any modifications has a probability of success. If the state does not sustain its burden for continued jurisdiction, the court may:

- (1) authorize a petition for termination of the parent-child relationship; or
- (2) discharge the child or the child's parent, guardian, or custodian.

Preparation of report:

Before the case review or hearing specified by subsections (b) and (c) or by subsections (h) and (i), the probation department or the county office of family and children shall prepare a report containing the information required under section 15(predispositional reports) of this chapter and request a formal court hearing. IC 31-6-4-19(d).

The federal case plan and review requirements, including the "reasonable efforts" requirements do not apply with respect to a child adjudicated to be a delinquent child, regardless of whether the child has committed an act which if committed by an adult would constitute a crime or a "status offender." However, if a child qualifies for Title IV-E foster care additional review hearings and certain findings must be made to enable the county to receive reimbursement for these placements. See D-11.01.

A juvenile court is not obligated to hold the twelve-month (12) or eighteen-month (18) review under IC 31-6-4-19 when a child is committed to the Department of Correction.

ADDITIONAL NOTES

Correcting information in juvenile records:

IC 31-6-8-1(j) and IC 31-6-8-1.2(i).

Petition by Department of Correction to reinstate jurisdiction:

IC 31-6-2-3(d):

The Department of Correction may petition the court to reinstate its jurisdiction over the child and his parent, guardian or custodian.

The court may recommend that Indiana Department of Correction continue commitment until Juvenile is 21, notwithstanding plea agreement for commitment to Boy's School.

In Re J.A.W., 504 N.E.2d 334 (Ind. App. 1987).

Legal Settlement for school purposes: The juvenile court shall make a finding of legal settlement of the child in a dispositional order, modification order or other decree when the court places a child or changes the placement of a child. This affects transfer tuition fees. IC 31-6-4-18.5; IC 20-8.1-6.1-1 [Legal Settlement]. The juvenile court shall, within ten days of placement, comply with the reporting

requirements under IC 20-8.1-6.1-5.5 concerning the legal settlement of the child.

Court reinstatement of jurisdiction:

IC 31-6-2-3:

Upon notification that the child will be released by the Department of Correction, the Court on its own motion, or on petition of the Department of Correction, can:

- (1) modify the dispositional decree;
- (2) order parental participation in programs operated by or through the Department of Corrections; and
- (3) reinstate jurisdiction to effectuate restitution.

PROCEDURE
(Modification and Mandatory Review)

I. Probation violation/modification:

- A. Petition for modification of dispositional decree.

USE FORM D-14.03 (unless modification is ordered by the court of its own motion.)

- B. Order for hearing and notice to parent, guardian or custodian.

USE FORM D-14.04

- C. Notice to parent, guardian, or custodian.

USE FORM D-14.05

- D. Report for modification hearing.

NOTE: The Benchbook Committee has not approved a particular form of report for a modification hearing. It should be left to the individual reporting agency and the needs of the local court.

- E. Order on hearing of modification petition.

USE FORM D-14.06

II. Mandatory Review hearings.

- A. Twelve month formal hearing pursuant to IC 31-6-4-19(h) to determine whether the dispositional decree should be modified and whether present placement is in the best interest of the child.

REQUIRE probation department to prepare and file report on progress made in implementing the dispositional decree, including the progress made in rehabilitating the child, preventing placement out of home, or reuniting the family.

If the time for the twelve-month review hearing was not fixed and set forth in the dispositional decree, notice of the mandatory review hearing should be issued and served upon the parent, guardian or custodian.

USE FORM D-14.05

At court hearing, court considers factors set forth in IC 31-6-4-19(h) and enters order following formal hearing.

USE FORM D-14.07 for order on twelve-month mandatory review.

- B. Eighteen-month formal hearing pursuant to IC 31-6-4-19(i) on question of continued exercise

of juvenile jurisdiction.

REQUIRE probation department to prepare and file report on progress made in implementing the dispositional decree, including the progress made in rehabilitating the child, preventing placement out of home, or reuniting the family.

If the time for the eighteen-month review hearing was not fixed in the dispositional decree or in the order made on the prior mandatory review hearing, notice of the mandatory review hearing should be issued and served upon the parent, guardian or custodian.

USE FORM D-14.05.

At the hearing the court considers factors set forth in IC 31-6-4-19(i) and enters order following formal hearing on the question of continued juvenile jurisdiction.

USE FORM D-14.08 for order on eighteen-month mandatory review.

NOTE: The federal case plan and review requirements of Public Law 96-272 do not apply with respect to a child adjudicated to be a delinquent child, regardless of whether the child has committed an act which if committed by an adult would constitute a crime or is a "status offender."

However, if a child qualifies for Title IV-E foster care reimbursement, additional review hearings and certain findings must be made to enable the county to receive reimbursement for these placements. See D-11.02.

III. Juvenile records:

IC 31-6-8-1(k)
IC 31-6-8-1.2(i)

Any person on whom records are maintained may request the court or agency to modify any information he believes is incorrect or misleading.

USE FORM D-15.04.

IV. Motion to terminate probation:

If any contest is anticipated, however, the procedure on modification and the usual modification forms and procedures should be followed.

USE FORM D-14.09

NOTE: The Benchbook committee believes that probation expires at a time certain or by operation of law. However, some courts may prefer to use this form for case management purposes.

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child.

PETITION FOR MODIFICATION OF DISPOSITIONAL DECREE

Your petitioner alleges and says:

1. The capacity in which your petitioner files this petition is:

[here set forth capacity of petitioner as required by IC 31-6-7-16(a)]

2. That on the ____ day of _____, 19____, the court entered a dispositional decree in this cause wherein _____

(here set forth particulars of dispositional decree)

3. Your petitioner further alleges and says: _____

(here set forth details of probation violation or other facts justifying modification)

4. The current legal settlement of the child is _____.

5. Your petitioner believes that the following modification is necessary and appropriate:

(here set forth particulars of requested change or additional information).

6. Referral (has) (has not) been made to the local coordinating committee. (If applicable)

7. That a modification report (is) (is not) (being prepared for filing) (filed herewith).

8. Your petitioner (does) (does not) request an emergency change in the child's residence. Your petitioner further alleges and says: _____

(here set forth facts justifying arrest or detention).

9. The following temporary order is requested: _____

WHEREFORE the petitioner requests the following relief:

1. to schedule a hearing for this petition;
2. that notice be given to all affected persons, including said child, his parent, guardian or custodian;
3. the modification of said dispositional decree as requested herein; and
4. for all further and proper relief, including the issuance of a temporary order, if an emergency has been alleged herein.

I affirm under the penalties of perjury that the foregoing representations and statements are true.

Dated: _____

Petitioner

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child.

**ORDER FOR HEARING AND NOTICE ON MODIFICATION PETITION
INCLUDING TEMPORARY ORDER**

Comes now _____
(petitioner)

and files a modification petition which petition is now considered by the Court and the Court having considered same, and being duly advised in the premises, now orders as follows:

1. The Court Sets said petition for hearing on the ____ day of _____, 19____, at _____ o'clock ____M.
2. The Court orders the Clerk to issue notice of hearing to be served upon said child and the following parent, guardian or custodian:
3. (*Select applicable paragraphs*) The petitioner having requested an emergency change in the child's residence, and the Court finding that the following grounds for detention exist:
 - () the child is unlikely to appear before the juvenile court for subsequent proceedings;
 - () the child has committed an act that would be murder or a Class A or Class B felony if committed by an adult;
 - () detention is essential to protect the child or the community;
 - () the parent, guardian, or custodian cannot be located or is unable or unwilling to take custody of the child; or
 - () the child has a reasonable basis for requesting that he/she not be released.
 - () Other: _____.

The following temporary order is therefore entered:

Dated: _____

Judge _____

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**NOTICE OF HEARING ON MANDATORY REVIEW
OF (OR PETITION TO MODIFY) DISPOSITIONAL ORDER**

TO: _____

You are hereby notified that a hearing has been scheduled before the above Court at _____ o'clock _____.M.
on the ____ day of _____, 19____, or as soon thereafter as the matter
may be heard, in regards to the following:

- () mandatory twelve (12) month review of dispositional decree;
- () mandatory eighteen (18) months review of dispositional decree;
- () on the motion of the Court to consider modification of the decree; or
- () on the Petition of _____
(name and capacity)
to modify the dispositional decree.

At the time of the hearing the Court will review the present placement of the child, whether it is appropriate and in the best interests of the child, circumstances concerning the status of the parents (guardian) (custodian) in reference to the child, whether additional services are required and the extent to which the child has been rehabilitated, and if an eighteen (18) months hearing, whether the Court should continue jurisdiction in this matter. Such hearing will be held in your absence should you fail to appear. Any report available to the Court for such hearing is available to you or your attorney prior to the hearing upon your request, except to the extent that the Court has determined certain portions of the contents are confidential, in which case a factual summary may be made available.

The Sheriff of _____ County is hereby ordered and directed to serve a true and complete copy of the above and foregoing Notice of Hearing upon the person named above and make due return thereof.

Dated: _____

Deputy/Clerk of the _____ Court

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER ON HEARING OF MODIFICATION PETITION

The State of Indiana appears by _____,
(Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
_____, appears in person and with/without counsel,
_____. The parent(s) (guardian) _____
appear in person. Also, (Probation Officer) (Intake Officer) _____
appears.

The modification petition now comes on for hearing.

The Court, after (reviewing the report for this hearing and) (considering the report of the local coordinating committee) hearing statements and evidence presented to the Court at this hearing, and duly advised in the premises, now finds as follows:

1. That on the ____ day of _____, 19____, the court entered a dispositional decree in this case wherein _____

(here set forth particulars of dispositional decree)

2. The legal settlement of the child is _____. The _____ County Office of Family and Children shall provide the notice required under IC 20-8.1-6.1-5.5.

3. The Court further finds: _____

(here set forth details of probation violation or other facts justifying modification)

4. The Court finds that the following modification is necessary and appropriate: *(here set forth particulars of ordered modification):* _____

So ordered this _____ day of _____, 19____.

Judge _____

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER ON MANDATORY TWELVE (12) MONTH REVIEW HEARING

[IC 31-6-4-19(h)]

The State of Indiana appears by _____,
 (Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
 _____, appears in person and with/without counsel,
 _____. The parent(s) (guardian) _____
 appear in person. Also, (Probation Officer) (Intake Officer) _____
 appears.

This case now comes on for Mandatory Review Hearing pursuant to provisions of IC 31-6-4-19(h).

The Court, after reviewing a report of the (probation department) (local office of family and children) on the progress made in implementing the dispositional decree, including the progress made in reuniting the family, and hearing statements and evidence presented to the Court at this hearing, and being duly advised in the premises, now finds as follows [*Here include findings of fact in accordance with IC 31-6-4-19(h)*]:

The legal settlement of the child is _____. The
 _____ County Office of Family and Children shall provide the notice required
 under IC 20-8.1-6.1-5.5.

IT IS THEREFORE ADJUDGED AND ORDERED BY THE COURT AS FOLLOWS:

(ALTERNATIVE A)

That no change be made in the dispositional decree and that the dispositional decree theretofore entered in this case be continued in full force and effect and that the next mandatory review hearing be held on the ____ day of _____, 19__ at _____ o'clock ____ M.

(ALTERNATIVE B)

(*Here set forth details of judgment*)

So ordered this ____ day of _____, 19__.

Judge

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER ON EIGHTEEN (18) MONTH MANDATORY REVIEW HEARING

[IC 31-6-4-19(i)]

The State of Indiana appears by _____,
 (Deputy/Prosecuting Attorney) (Attorney for Office of Family and Children). The child,
 _____, appears in person and with/without counsel,
 _____. The parent(s) (guardian) _____
 appear in person. Also, (Probation Officer) (Intake Officer) _____
 appears.

This case now comes on for Mandatory Review Hearing pursuant to provisions of IC 31-6-4-19(i).

The Court, after reviewing a report of the (probation) (local office of family and children) on the progress made in implementing the dispositional decree, including the progress made in reuniting the family, and hearing statements and evidence presented to the Court at this hearing, and being duly advised in the premises, now finds as follows [*Here include findings of fact in accordance with IC 31-6-4-19(i)*]:

The legal settlement of the child is _____. The
 _____ County Office of Family and Children shall provide the notice required
 under IC 20-8.1-6.1-5.5.

IT IS THEREFORE ADJUDGED AND ORDERED BY THE COURT AS FOLLOWS [*Here set forth details of judgment*]:

So ordered this ____ day of _____, 19____.

Judge _____

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

MOTION TO TERMINATE PROBATION

Comes now _____, Probation Officer of the
 _____ County _____ Court, and advises the Court that in
 the above entitled case _____, was found to be a delinquent child and placed on formal
 probation by the Court on _____, 19____. Your petitioner now requests the Court to
 release said child from probation for the reason that said child has: (Select the appropriate reason)

- ☐ reached the age of eighteen (18) years;
- ☐ moved out of the jurisdiction of the Court;
- ☐ whereabouts unknown;
- ☐ satisfactorily completed terms of probation;
- ☐ further supervision is not advised; or
- ☐ other (explain): _____

Petitioner**ORDER**

Motion sustained. Said juvenile is now released from probation and jurisdiction in this matter is terminated.

So ORDERED this ____ day of _____, 19____.

Judge

Code Conversion Table

CHAPTER 15: Public Access to Hearings and Records in Juvenile Delinquency Proceedings		
Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
1	31-6-7-10	31-32-6
1	31-6-7-10(c)	31-32-6-3
1	31-6-7-10(d)	31-32-6-4
1	31-6-7-10(e)	31-32-6-5
1	31-6-7-10(f)	31-32-6-6
2	31-6-7-10(a)	31-32-6-1
2	31-6-8-1	31-39-1-1 <i>et seq</i> 31-32-2-1 <i>et seq</i>
2	31-6-8-1(a)	31-39-1-1 and 2 31-39-2-1
2	31-6-8-1(b) 31-6-8-1(c) 31-6-8-1(d) 31-6-8-1(e) 31-6-8-1(f) 31-6-8-1(g) 31-6-8-1(h) 31-6-8-1(i)	31-39-2-2 through 8 31-39-2-10 31-39-2-9 31-39-2-11 31-39-2-14 31-39-2-12 31-39-2-13 31-39-2-15
4	31-6-8-1(j)	31-39-7-1
5	31-6-7-10(d)	31-32-6-4
6	31-6-8-1	31-39-1-1
6	31-6-8-1(c)	31-39-2-10
6	31-6-8-1(d)	31-39-2-9
6	31-6-8-1(e)	31-39-2-11
7	31-6-8-1(g)	31-39-2-12
7	31-6-8-1(h)	31-39-2-13
7	31-6-8-1(i)	31-39-2-15

SCOPE NOTE

Public Access to Hearings and Records in Juvenile Delinquency Proceedings

I. Public [and Media] Access to Hearings: I.C. 31-6-7-10

- A. A delinquency proceeding concerning a petition alleging that the child has committed ***murder*** or a ***felony*** (if committed by an adult) is open to the public. I.C. 31-6-7-10(c).

NOTE: Proceedings involving *only* misdemeanor and/or status offenses are not referred to in this statute.

1. The prosecuting attorney, the child, or the child's guardian ad litem, counsel, parent, guardian or custodian may file a motion requesting that the court close the proceeding, and the Court may issue an Order closing the proceeding during the testimony of a **child witness or child victim, IF** the Court FINDS: [I.C. 31-6-7-10(d)]
 - (a.) An allegation or a defense involves matters of a sexual nature; AND
 - (b.) Closing the proceeding is necessary to protect the welfare of the child witness or child victim.
2. *Before* issuing an Order closing the proceeding during the testimony of a child witness or victim, the Court *shall* consider: [I.C. 31-6-7-10(e)]
 - (a.) The nature of the allegation or defense; and
 - (b.) The age of the child witness or victim; and
 - (c.) The psychological maturity of the child witness or victim; and
 - (d.) The desire of a child witness or victim to testify in a closed proceeding.
3. If the Court closes the proceedings to the public under I.C. 31-6-7-10(d), the Court shall: [I.C. 31-6-7-10(f)]
 - (a.) Make findings of fact concerning the closing of the proceeding; and
 - (b.) Place the exclusion order in the file of the proceedings.
4. The statute does not specifically authorize the Court to close the proceedings on its own motion; however, the Court has inherent authority to govern its proceedings.

[COMMENT: The Court should consider establishing a policy concerning inquiries from the press.]

- B. All proceedings in a juvenile court involving *adults* charged with criminal contempt of court or criminal charges *shall* be open to the public. IC 31-6-7-10(a)

II. Public Access to Records of Juvenile Court: I.C. 31-6-8-1 This statute applies to all records of the juvenile court *except*: (1) records involving an *adult* charged with a crime or criminal contempt of court; and (2) records involving a pregnant minor or her physician seeking a waiver of the requirement for written parental consent before performing an abortion on an unemancipated minor which is governed by other statutory provisions. "Records" only include: chronological case

summaries, index entries, summonses, warrants, petitions, orders, motions and decrees. I.C. 31-6-8-1(a).

A. **Basic rule:** All records of the juvenile court are confidential, and are available only in accordance with I.C. 31-6-8-1(b), (c), (d), (e), (f), (g), (h) and (I). **[NOTE: The basic rule is confidentiality, with numerous *specific* exceptions.]**

B. **Persons authorized access, without a Court Order:** Certain records are available to the following persons without an order of the Court: I.C. 31-6-8-1(b) [”Records,” in this context, include: Child’s name; age; the nature of the offense; Chronological Case Summaries; index entries; summonses; warrants; petitions; orders; motions other than related to psychological evaluations, child abuse and neglect; decrees. Once the child is adjudicated delinquent, then the child’s *photograph* may also be released. I.C. 31-6-8-1(b)]

- (1) The judge or any authorized staff member;
- (2) Any party and his/her attorney [with certain exceptions explained in I.C. 31-6-8-1(b)(2)];
- (3) A criminal court judge or authorized staff member, if the record is to be used in a presentence investigation in that court;
- (4) The prosecutor or any authorized staff member;
- (5) The attorney, or any authorized staff member, of the county or state office or division of family and children, or the department of correction;
- (6) The parents of a child when the custody or support of that child is in issue in a divorce/modification proceeding;
- (7) The public, whenever a petition has been filed alleging that a child is delinquent because of alleged act(s) that:
 - (a) Would be murder or a felony if committed by an adult; or
 - (b) Are an aggregate of two (2) unrelated acts that would be misdemeanors, and if the child was at least twelve (12) years of age when the acts were committed; or
 - (c) Are an aggregate of five (5) unrelated acts that would be misdemeanors, if the child was less than twelve (12) years of age when the acts were committed.

C. **Access by persons and agencies, with a Court Order:** Various persons and agencies may be granted access to juvenile records with Court permission. These persons and agencies are detailed in I.C. 31-6-8-1, subparagraphs (c) through (h), to include:

- persons having a legitimate interest in the work of the court or in a particular case
- a person providing services to the child or the child’s family
- a person involved in a legitimate research activity. [NOTE: this requires certain written agreements as to use of the information between the court and the requestor.]
- any party to a criminal or juvenile delinquency proceeding *if* the information may be used to impeach the person [to whom the record applies] as a witness, or to discredit the person’s reputation if the *person* places it in issue.
- the victim of a delinquent act, or the victim’s family, *if* the information may be used in a civil action against the child who committed the act, or against the child’s parent

[NOTE: Whenever the court grants access to its records, the court must place a copy of the access order in the file of *each* person to whose record the order applies. *Caveat:* only *one* general access order or agreement pertaining to legitimate research activity need be prepared, and should be placed in a miscellaneous order file.]

- D. **Waiver:** Only the person (who must be 18 years old or older at the time of waiver) may waive the restrictions on access to their records. I.C. 31-6-8-1(I). **[NOTE: the parent, guardian or attorney for the child is *not* permitted to waive restrictions on the child's records]** The waiver must be submitted to the court in writing, and must state the terms and limitations (if any) of the person's waiver.
 - E. **Correction of records:** The person on whom records are maintained may request *the court* to modify any information that person believes is incorrect or misleading. I.C. 31-6-8-1(j).
- III. **Records of law enforcement agencies:** I.C. 31-6-8-1.2 sets forth the restrictions on access to law enforcement records involving delinquents and children in need of services. Many of the provisions of this statute are similar to the restrictions on access on court records. It is important to note, however, that access to law enforcement agency records is controlled (where applicable) by the head of the law enforcement agency. The juvenile court judge may not exercise any jurisdiction or control over: (1) the records kept and maintained by law enforcement agencies relating to juveniles; and (2) the discretion granted to the head of the law enforcement agency to release or grant access to those records. I.C. 31-6-8-1.2(j)

STATE OF INDIANA

____ COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child.

**ORDER CLOSING PUBLIC ACCESS TO JUVENILE PROCEEDING
DURING TESTIMONY OF CHILD WITNESS/VICTIM**

IC 31-6-7-10(d)

Comes now _____ the [Prosecuting Attorney] [Child]
[Child's Guardian Ad Litem] [Child's Parent/Guardian/Custodian] having filed a motion requesting an
Order closing the juvenile proceeding in this case during the testimony of a child witness or victim:

The Court having considered the matters presented in support of said motion now finds:

- (1) That an allegation or a defense in these delinquency proceedings involves matters of a sexual nature; AND
- (2) That closing the proceeding is necessary to protect the welfare of a child witness or child victim in this case.

In making these findings, the Court has considered the nature of the allegation or defense, the age of the child witness or child victim, the psychological maturity of the child witness or child victim, and the desire of the child witness or child victim to testify in a proceeding closed to the public.

IT IS THEREFORE ORDERED that this juvenile proceeding shall be closed to the public during the duration of the testimony of the child witness or child victim.

IT IS FURTHER ORDERED that a copy of this exclusion Order shall be placed in the case file of this proceeding for record.

So ordered this _____ day of _____, 19____.

Judge _____

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER GRANTING ACCESS TO CERTAIN JUVENILE RECORDS

The _____ [Agency or person] having made a written request for access to the juvenile records of the delinquent child on _____ [date] under the provisions of IC 31-6-8-1; and

The Court having read and considered said request now Orders:

[Select one of the applicable paragraph stated below]

- ☐ Pursuant to IC 31-6-8-1(c), _____, a person having a legitimate interest in the work of the court or in a particular case access to court records, shall have access to the following juvenile records in this case: *[Here state limitations to access, if any:]*.

The person having access to the records under this Order is not bound by the confidentiality provisions of IC 31-6-8-1, and **may** disclose the contents of these records.

-OR-

- ☐ Pursuant to IC 31-6-8-1(d), _____, a person providing services to the child or the child's family, shall have access to the following juvenile records in this case: *[Here state limitations to access, if any:]*.

The person having access to the records under this Order is bound by the confidentiality provisions of IC 31-6-8-1, and may **not** disclose the contents of these records.

-OR-

- ☐ Pursuant to IC 31-6-8-1(e), _____, a person involved in a legitimate research activity, shall have access to this Court's confidential juvenile records. *[Here state limitations to access, if any:]*.

The person having access to the records under this Order is bound by the confidentiality provisions of IC 31-6-8-1, and may **not** disclose the contents of these records and may **not** disclose the identity of each person whose records are reviewed.

-OR-

- ☐ Pursuant to IC 31-6-8-1(g), _____, a party to a criminal or juvenile

delinquency proceeding, shall have access to the following juvenile records in this case: [*Here state limitations to access, if any:*].

The person(s) having access to the records under this Order is bound by the confidentiality provisions of IC 31-6-8-1, and may **not** disclose the contents of these records, *except for the following permitted purposes*: (1) to impeach the person as a witness; or (2) to discredit the person's reputation if the person places it in issue.

-OR-

- [] Pursuant to IC 31-6-8-1(h), _____, a victim of a delinquent, or a member of the victim's family, shall have access to the following juvenile records in this case: [*Here state limitations to access, if any:*].

The person(s) having access to the records under this Order is bound by the confidentiality provisions of IC 31-6-8-1, and may **not** disclose the contents of these records, *except for the following permitted purposes*: only if disclosure is necessary to prosecute any civil action.

-OR-

- [] Pursuant to IC 31-6-8-1(i), _____, a person eighteen (18) years of age or older has filed a written waiver of the restrictions on access to that person's records, stating therein the terms of the person's waiver: [*Here state limitations to access, if any:*].

Therefore, the confidential records pertaining to _____, a person eighteen (18) years of age or older, shall be open to public access, with the following limitations: [*Here state the limitations requested by the releasing person*].

All persons granted access to the confidential records described herein are bound by the terms and limitations of disclosure stated herein. A person who intentionally, knowingly or recklessly discloses confidential records and information in violation of the restrictions of this Order is subject to criminal and civil liability and penalty.

A copy of this access Order shall be placed, by the Clerk of Court, in the file of each person to whose records this Order applies.

[*If this is a general access order*]: A copy of a general Order granting access pursuant to IC 31-6-8-1(e), only, shall be entered upon the Records of Judgment and Orders of this Court, and placed by the Clerk in the Miscellaneous Order file of this Court.

So Ordered this ____ day of _____, 19____.

Judge _____

Code Conversion Table

CHAPTER 16: Miscellaneous Forms		
Citation on Chapter Page	Statute under <i>Former</i> Title 31	Statute under <i>Revised</i> Title 31
2	31-6-8-1.5	31-39-5-1
4	31-6-8-1.2(k)	31-39-4-14
6	31-6-8-2(c)	31-39-8-3

SCOPE NOTE

Miscellaneous Forms

NOTE: This section contains delinquency forms which were deemed necessary by the Benchbook Committee but were incapable of being included in any previous Benchbook sections.

STATE OF INDIANA

COURT

In The Matter of _____

Case No. _____

A Child Alleged to be a Delinquent Child

**PETITION FOR GENERAL ORDER FOR
FINGERPRINTING AND PHOTOGRAPHING JUVENILES**
(IC 31-6-8-1.5)

Comes now the _____ Department and petitions the Court for a general order authorizing the fingerprinting and photographing of juveniles over fourteen (14) years of age, taken into custody and alleged to have committed an act that would be a felony if committed by an adult, which prints and photographs will be kept separate from those of adults, and access thereto will be subject to the confidentiality provisions of the statute.

_____ Department

By _____

Title

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child

ORDER FOR FINGERPRINTING AND PHOTOGRAPHING OF CHILD

The Court, _____, being duly advised orders and
(on its own motion or upon motion of)
directs that children over fourteen (14) years of age who are alleged to have committed an act that would
be a felony if committed by an adult may be fingerprinted and photographed for identification purposes and
that such fingerprint records and photographs shall be filed and kept by
_____ in files and records separate
(Insert name of appropriate Sheriff's Department or Police Department)

and apart from those pertaining to adults.

So ORDERED this ____ day of _____, 19____.

Judge

STATE OF INDIANA

COURT

In The Matter Of _____

Case No. _____

A Child Alleged to be a Delinquent Child.

PETITION TO MODIFY COURT RECORDS OF CHILD

Comes now the undersigned Petitioner and represents to the Court as follows:

1. That the Petitioner has been informed and has cause to believe that certain records pertaining to the above named child, and under the control of this Court are incorrect or misleading in that *(here set forth particulars of records complained of)*: _____

[It should be noted that while the Court can order records of law enforcement agencies expunged, it cannot order them to be corrected. IC 31-6-8-1.2(k).]

2. That such records should be corrected and modified as follows *(here set forth basis of correction sought and particulars of requested change.)*: _____

That the modification of such records is necessary, appropriate and will avoid prejudice to and be in the best interests of said child.

WHEREFORE the Petitioner requests the following relief:

1. That this matter be scheduled for hearing with notice thereof;
2. For modification of the Court's records as requested herein; and
3. For all further and proper relief in the premises.

I affirm under the penalty of perjury that the foregoing representations are true.

Petitioner
Name (typed)_____

Dated: _____, 19_____

Address: _____

Capacity: _____

Telephone: _____

Attorney for Petitioner

Address: _____

Telephone: _____

STATE OF INDIANA

_____ COURT

In This Matter Of _____

Case No. _____

_____ A Child Alleged to be a Delinquent Child

PETITION TO EXPUNGE RECORDS

Comes now _____, and petitions the Court to

(any person)

remove from its files all records pertaining to the involvement of _____

(name of child)

in Juvenile Court proceedings in this Court for the following reasons:

[See IC 31-6-8-2(c) for matters of circumstances the court may consider in making its determination.]

Your petitioner further requests, that should the Court grant his petition, that an order be made and directed to each law enforcement agency and each person who provided treatment for this child, under an order of this Court, to send said child's records to the Court for destruction or delivery to the child.

WHEREFORE, your Petitioner prays that the Court grant his petition, expunge the records of the Court as to said child, and make such further order to law enforcement agencies and persons as is necessary to carry out the intent of the statute.

I affirm under the penalty of perjury that the foregoing representations are true.

Dated: _____

Petitioner

Address: _____

Telephone: _____

STATE OF INDIANA

____ COURT

In This Matter Of _____

_____ Case No. _____
 A Child Alleged to be a Delinquent Child

ORDER GRANTING PETITION TO EXPUNGE

The Court having considered the Petition for Expungement heretofore filed in this matter and being duly and sufficiently advised in the premises now finds and orders:

That in the best interests of the child and _____
 (any other cause or reason)

_____ said petition should be and the same is, hereby granted and all records of this Court pertaining to said child shall be (destroyed)(delivered to said child). The Court further Orders and directs that all records of said child maintained by any law enforcement agency by _____, a person(s) who has furnished services to said child under Court Order shall be removed from their files and delivered to this Court for delivery of destruction. A copy of this Order shall be served upon *(name[s] of law enforcement agency and/or person or department.):*

SO ORDERED this _____ day of _____, 19____.

 Judge

INDIANA JUVENILE DETENTION CENTERS
Indiana Judicial Center
115 West Washington Street, Suite 1075
Indianapolis, Indiana 46204-3417

D-16.07

FACILITY	NAME/TITLE	ADDRESS	PHONE	CAPACITY
Allen County Wood Youth Center	John W. Newsom Superintendent	2929 Wells Street Ft Wayne, IN 46808	(219) 449-7161	51 secure -male 14 secure -female
Bartholomew County Youth Services Center	Chuck Seidelman Director	2350 Illinois Street Columbus, IN 47201	(812) 379-1690	16 detention/secure 10 shelter care male & female
Clark County Juvenile Detention Center	Jim Snook Director	609 Meigs Avenue Jeffersonville, IN 47130	(812) 285-6360	14 secure male & female
Dearborn County Juvenile Detention Center	Laurie Patton Director	219 W. High Street Lawrenceburg, IN 47025	(812) 537-8740	20 secure male & female
Delaware County Juvenile Detention Center	David Dickerson Director	901 W. Riggins Road Muncie, IN 47303 <i>Eff. 3/97 new location Kilgore Avenue Muncie, IN</i>	(317) 747-7828	16 secure male & female <i>Eff. 3/97</i> 16 secure male 8 secure female
Elkhart County Juvenile Detention Center	Bob Girard Director	114 North 2nd Street Goshen, IN 46526	(219) 534-1312	17 secure male & female
Grant County Youth Services Annex	Mike Ross Director	532 East 5th Street Marion, IN 46953	(317) 662-9864	16 secure male only
Hamilton County Juvenile Detention Center	Mitchell Russell Director	18106 Cumberland Road Noblesville, IN 46060	(317) 776-9828	30 secure male & female
Henry County Youth Center	Carolyn Bunch Director	103 W Co. Road 100 N P.O. Box 469 New Castle, IN 47362	(317) 593-9603	30 secure - male & female 20 non-secure (10 male, 10 female)
Howard County Robert J. Kinsey Youth Center	Janet Weaver Director	701 S. Berkley Road Kokomo, IN 46901	(317) 457-1408	12 secure - male 8 secure - female 16 shelter care - male & female 24 residential - male & female

FACILITY	NAME/TITLE	ADDRESS	PHONE	CAPACITY
Johnson County Juvenile Detention Center	James Higdon Superintendent	1121 Hospital Road Franklin, IN 46131	(317) 736-3020	40 secure - male 8 secure - female
Knox County Southwest Indiana Regional Youth Center	Scott Fitch Detention Manager	1700 Theobald Lane Vincennes, IN 47591	(812) 886-3000	40 secure - male & female 72 residential - male 10 independent - male 10 transitional - male
Lake County Juvenile Center	Robert Bennett Superintendent	3000 West 93rd Avenue Crown Point, IN 46307	(219) 769-4664	84 secure male & female
LaPorte County Dorothy S. Crowley LaPorte County Juvenile Services Center	Kris Carpenter Executive Director	0364 South Zigler Road LaPorte, IN 46350	(219) 324-5130	12 secure - male & female 12 residential - 8 male, 4 female 12 treatment - 8 male, 4 female
Madison County Youth Center	Noel G. Williams Superintendent	3420 Mounds Road Anderson, IN 46017	(317) 646-9268	32 secure - male & female 24 shelter care - male & female 24 residential - male & female 20 independent - male & female
Marion County Juvenile Justice Complex	Damon Ellison Superintendent	2451 N. Keystone Avenue Indianapolis, IN 46218	(317) 924-4841 (or 924-7492 after hours)	144 secure male & female
Porter County Juvenile Detention Center	Ann Baas Superintendent	1660 S. State Road 2 Valparaiso, IN 46383	(219) 465-3520	24 secure male & female
St. Joseph County The Parkview Juvenile Center	Thomas N. Frederick Director of Court Services	1921 Northside Boulevard South Bend, IN 46615 <i>Eff. 3/97 new location Ohio & Michigan Sts. South Bend, IN</i>	(219) 235-9588	13 secure male & female <i>Eff. 3/97</i>
Vanderburgh County Youth Care Center	Roger Mason Director	727 Chestnut Evansville, IN 47713	(812) 421-3806	10 secure 10 non-secure male only
Vigo County Juvenile Center	Will Ennan Director	1919 Hunt Road Terre Haute, IN 47805	(812) 462-3414	11 secure - male 6 secure - female

Prepared 9/96

CONTEMPT CHECKLIST

Category:	<u>Direct Criminal Contempt</u>	<u>Indirect Criminal Contempt</u>	<u>Civil Contempt</u>
How initiated:	Verbal directive to accused by judge.	Independent action, verified by oath or affirmation, filed by court officer or other responsible party.	Petition filed by aggrieved party asking court to issue rule to show cause.
Who initiates:	The judge (matter needs immediate attention to resolve problem).	The state.	The aggrieved party.
When initiated:	At the time of the violation or disruption.	Within a reasonable time after the violation.	Anytime after the contempt occurs.
Notice for the accused:	Defendant must be told immediately by verbal statement specifying acts or omissions.	Written rule to show cause, verified by oath or affirmation, must be served on the defendant.	Written rule to show cause, verified by oath or affirmation, must be served on the defendant.
Separate cause of action?	Yes.	Yes.	No.
Right to counsel:	No.	Yes.	Yes.
Change of venue:	No.	Not from special judge.	Not with respect to contempt charges.
Change of judge:	No, unless disposition of the contempt charge is not summarily accomplished.	Yes, unless contempt charge grows out of willfully resisting, hindering, delaying, or disobeying any lawful process of order of the court.	No.
Jury trial:	No.	Only if actual sentence imposed will be greater than six months.	No, unless contempt is in for violation of a labor injunction. IC 22-6-1.
Proceedings to be reported:	Yes. Formal order and findings.	Yes.	Yes.

Punishment available:	IC 34-4-7-6 limiting punishment to six months imprisonment and \$500 fine was repealed 1/1/87. Limited by reasonableness.	IC 34-4-7-6 limiting punishment to six months imprisonment and \$500 fine was repealed 1/1/87. Limited by reasonableness.	Any sanctions, including imprisonment and fines, are limited to those designed to coerce compliance with court order for the benefit of the aggrieved party.
Right to appeal:	Yes.	Yes.	Yes.
Burden of Proof:	Clear and convincing evidence.	Clear and convincing evidence.	Clear and convincing evidence.
Constitutional rights:	Severely Restricted.	Generally Applicable.	Right to court appointed counsel if indigent and imprisonment possible.

**INDIANA
JUVENILE DELINQUENCY BENCHBOOK**

TABLE OF CASES

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Atkins v. State, 290 N.E.2d 441 (Ind. 1972)	D- 7.01

B

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506 U.S. 838, 121 L.Ed.2d 72	D- 7.01
Davis v. Winston, 535 N.E.2d 1240 (Ind. App., 1989)	D- 2.01

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Gregory v. State, 386 N.E.2d 675 (Ind. 1979)	D- 7.01

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